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# Why Exploitation is Unjust: An Egalitarian Account

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## **Declaration**

I declare that this thesis is my own work and that it has not been submitted for a degree at another university. It does not contain work published elsewhere.

## Abstract

The thesis aims to address three major issues: *what exploitation is*, *why exploitation is unjust for egalitarians*, and *how we should respond to mutually beneficial and consensual exploitation*. Thus, it is divided into three parts corresponding to the three issues. Part One critically engages with prominent accounts of exploitation developed by Alan Wertheimer and Ruth Sample. It defends a distinctive conception according to which exploitation is an egalitarian wrong that consists of exploiters gaining unfairly or disrespectfully by taking advantage of others. In Part Two, I review the debate between luck and relational egalitarianism and then, criticise luck egalitarian accounts of justice for failing to account for instances of exploitation that do not arise from unjust background conditions. In Part Three, I examine whether or not sweatshop exploitation — which benefits the poor in developing countries and generates social inequality — is morally permissible, all things considered, and whether third parties ought to interfere with it. Consequently, the thesis aims to deepen our understanding of egalitarian justice by exploring the relationships between exploitation and egalitarianism.

# 1. Introduction

Exploitation has been a stubborn fact in human society, either in slave society in which masters exploit slaves, in feudal society in which landlords exploit peasants, or in our capitalist society in which capitalists exploit workers (Marx, 1990; cf. Wood, 2008, 2012, 2015). The scope and severity of capitalist exploitation in our world remains an empirical question, one I will not address in the thesis. Instead, the core question I am interested in is how egalitarians identify, assess, and respond to exploitation. Thus, the thesis aims to scrutinise whether the varieties of egalitarianism can give an adequate account of the nature and wrongness of exploitation.

How to understand the ideal of equality, among other values, has been one of the main controversies in contemporary Anglophone political philosophy. Political philosophers have proposed different conceptions of equality. Within the controversy, luck egalitarianism is the most prominent account of egalitarian justice. Roughly put, it holds that it is unfair for a person to suffer from a disadvantage that is no fault of their own. Luck egalitarianism, then, represents the liberal egalitarian understanding of the ideal of equality. Distinct from the liberal egalitarian tradition and the Christian tradition,<sup>1</sup> classical Marxism has its notion of equality (Cohen, 2001: 1-2). Nevertheless, as Cohen indicated, classical Marxism retains the claim that a justification for socialism is unnecessary. This is partly because, according to historical materialism, **socialism arose from a rigorous analysis of economics and history, rather than in response to a clarification of the ideal of equality.** They believe that *to change human society causally*, we must understand the law of transformation of human society. In addition, they saw no need to justify socialism's desirability since the majority of society was composed of the working class (Cohen, 1995: 4-8), and so the real socialist movement seemed intuitive before the collapse of Soviet

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<sup>1</sup> I will leave the Christian tradition aside and focus on classical Marxism.

Union. For these reasons, the socialist or Marxist approach to the ideal of equality remains unspecified and vague.

Moreover, Marxism — which endorses historical materialism, an empirical and historical theory that studies the structure and transition of society — seems to contradict *normative political philosophy*, a philosophical and ahistorical discipline that explores and reflects normative judgments (Cohen, 1995: 1). Given Marxists' commitment to historical materialism, implicitly they suppose that “either there is no such thing as normative truth or it is a truth which changes historically with economic circumstances and requirements” (Cohen, 1995:2). The spirit of historical materialism is best illuminated by Marx's claim that “Communism is for us not a *state of affairs* which is to be established, an *ideal* to which reality [will] have to adjust itself. We call communism the *real* movement which abolishes the present state of things” (2000: 184-186, his italics). In the quoted sentence, Marx explicitly rejects treating communism as a moral ideal worth pursuing; rather, he views communism as a social movement that stems from the inevitable social conflict between classes. By endorsing historical materialism, Marxists view things primarily from a social and historical perspective. Marxist political philosophy then appears to be a paradox, because political philosophy, as it has been traditionally perceived, aims to propose timeless normative principles.

On Cohen's view, however, Marxists need not resist, but instead have to engage in, the enterprise of normative political philosophy for three reasons. First, Cohen correctly points out that Marxists need normative principles to motivate revolutionary workers and others who do not have relevant interests in socialism (Cohen, 1995: 3). Normative principles can help to recruit comrades.<sup>2</sup> Second, the proletariat once consisted of the exploited, the needy, the producers, and the majority in society, but, now, in an advanced

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<sup>2</sup> A further question is how efficient people will be motivated by moral principles to overthrow capitalism.

industrial society, there is no single group that has these four features simultaneously (Cohen, 1995: 8). Moreover, for Cohen, if the proletariat were no longer the majority of society, Marxists would be impelled to seek a political philosophy that promotes socialism, that is, they must find a justification for socialism's moral desirability. Third, and more importantly, Cohen believes that his interpretation of historical materialism need not "reduce all values and principles to rationalization of class interests" (1995: 2); rather, the end of class conflict is where a real morality begins, because class interests no longer constrain people.<sup>3</sup> In addition, since historical materialism is an empirical theory that explains social structures and the dynamic of history, it has "nothing to say about what justice (timelessly) is" (Cohen, 1995: 3). If so, for Cohen, one can hold that a principle of justice is timelessly true, while insisting that, *to change society*, normative principles (such as Cohen's rules of regulation) should reflect certain social facts. Put together, once we follow Cohen's distinction between ultimate normative principles, which are not grounded on facts, and rules of regulation, which are fact-sensitive (2008: ch.6), the apparent contradiction between historical materialism and political philosophy ceases. However, if the contradiction ceases, one is left to wonder: what is the ideal of socialist and Marxist political philosophy?

The concept of exploitation, I believe, is the key to formulate socialist and Marxist political philosophy. Given that exploitation is a constant and stubborn fact in human society, which is primarily produced by class division, socialist and Marxist political philosophy should be able to deal with the exploitation. As such, the termination of exploitation is one of the ultimate goals that socialists and Marxists attempt to achieve. For example, Marx's socialist society is a society where exploitation ceases. Socialist and Marxist political philosophy should view exploitation as a form of objectionable inequality,

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<sup>3</sup> For Cohen's interpretation of historical materialism, see Cohen (2000, 1988)

condemn the injustice of exploitation, and aim at liberating people from exploitation. Hence, the concept of exploitation has a pivotal role within socialist and Marxist political philosophy, and we might wonder how and whether mainstream egalitarians can respond to exploitation appropriately.

Nonetheless, the two main forms of egalitarianism, luck and relational egalitarianism, seem not to provide satisfactory answers to exploitation. On the one hand, although Elizabeth Anderson and Samuel Scheffler, two leading relational egalitarians, view exploitation as a relational egalitarian wrong, they do not offer any account of it.<sup>4</sup> On the contrary, although leading luck egalitarians, such as Cohen, John Roemer, Richard Arneson, and Hillel Steiner, discuss exploitation more extensively than some relational egalitarians, as I will argue in Chapter 4 and 6, their accounts are not satisfactory. Note that I think luck egalitarianism can deal with some forms of exploitation and Marx did share certain luck egalitarian intuitions. For example, in ‘Critique of the Gotha Programme’, Marx argued that it is *unequal* if we grant that people should be rewarded according to their ability because doing so is to tacitly recognise unequal individual endowments (2000: 160-166). Instead, in the higher stage of Marx’s communism, the unequal rights — to each according to their contribution — will be replaced by the doctrine “from each according to his ability, to each according to his needs” (ibid.). Since people’s differential endowments belong to unfair inequalities, eliminating the inequalities shares some spirit of luck egalitarianism: in that it is unfair for a person to suffer disadvantages, which are no fault of her own. However, as I shall argue in Chapter 6, while Marx’s communism shares some spirit of luck egalitarianism, luck egalitarianism fails to deal with exploitation that emerges within an otherwise just world. As such, I believe equality demands more than luck egalitarianism. Hence, the thesis aims to raise the concern of exploitation in contemporary egalitarianism.

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<sup>4</sup> Anderson and Scheffler have rarely discussed exploitation. David Miller (1997), Jonathan Wolff (1999, 2018) and Iris Young (1990: ch.2) are exceptions.

Having conveyed my research context, I shall now introduce the three questions central to the thesis.

### 1.1. Three Questions

The thesis addresses three major issues: *what exploitation is*, *why exploitation is unjust for egalitarians*, and *how we should respond to mutually beneficial and consensual exploitation*. Thus, the thesis is divided into three parts and consists of six chapters corresponding to the three questions.

In Part 1 (Chapter 2 to 4), I formulate an account of exploitation by critically engaging with contemporary theories of exploitation, particularly, Alan Wertheimer (1996) and Ruth Sample (2003). Before turning to the main arguments in Part 1, I shall introduce some common ground that I take for granted. First of all, I follow the general formulation of exploitation: *to exploit amounts to taking unfair advantage of someone* (Wertheimer, 1996; Christiano, 2015; 262-265; Ferguson, 2018; Miller, 1990). More specifically, exploitation consists of two components: (1) A, the exploiter, gains by (2) taking advantage of B, the exploitee (Vrousalis, 2018: 2). This means, if A does not benefit from the interaction with B, A does not exploit B, though A might wrong B in ways other than exploitation. Further, even if A benefits from the interaction with B, if A does not take advantage of B, no exploitation occurs. So understood, giving someone a gift is not necessarily exploitative because neither party expects a return of equivalent value from the interaction (Reiff, 2013: 80-82) and, more importantly, doing so does not involve (2). Based on various interpretations of, and different weights between, (1) and (2), theorists propose different accounts of exploitation. I will follow the general formulation to establish my account of exploitation as well.

Second, the mainstream discussion of exploitation focuses on mutually beneficial and



consensual, exploitation, rather than harmful and non-consensual exploitation (Wertheimer, 1996: 13-16).<sup>5</sup> This is because, when identifying exploitation's wrong-making features, mutually beneficial and consensual exploitation raises more theoretical difficulties than harmful and involuntary exploitation. And if the moral wrongness of mutually beneficial and consensual exploitation can be identified, it is easy to condemn harmful and involuntary exploitation. Thus, the thesis focuses on mutually beneficial and consensual exploitation.

Third, the other shared consensus is that exploitation need not involve coercion (Feinberg, 1983: 201-235; Miller, 1987: 151; Wertheimer, 1996: 25-28; Green, 2007: ch.7; Hill, 1994).<sup>6</sup> Of course, one plausible line is to argue that exploitation is coercive in the sense that the exploited do not have *acceptable* choices, even if an exploitative offer is better than no-transaction. However, even if exploitation can be conceptually related to notions such as manipulation, threats, or oppression (Wood, 2014), it is important not to conflate exploitation with these notions. Otherwise, we might lose the conceptual clarity of exploitation. Rather, an account of exploitation is successful when it can distinguish between exploitative and non-exploitative transactions (Wollner, 2019: 146). This standard is adopted to examine whether an account of exploitation succeeds. Hence, the primary task of Part 1 is to formulate and defend an account of exploitation by distinguishing exploitation from other similar notions.

Having introduced the common ground, I shall briefly introduce the core arguments I make in Part 1. Generally speaking, Chapter 2 and 3 concern (1): how the exploiter gains *wrongfully* in two distinct ways; Chapter 3 concerns (2): the meaning of advantage-taking behaviour. In Chapter 2, I introduce and criticise Wertheimer's account of exploitation

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<sup>5</sup> Exploitation is mutually beneficial in that both A and B gain compared to no-transaction, and it is consensual in that both A and B agree to the transaction. Harmful exploitation refers to a situation where B, the exploitee, is worse off compared to no-transaction after the transaction with A, the exploiter.

<sup>6</sup> See Jeffrey Reiman (1987), for a connection between exploitation and coercion.

(1996), which I shall term '*unfair exploitation*'. This account holds that A exploits B if and only if A takes advantage of B's inferiority to gain unfairly relative to a fairness baseline. The core argument in Chapter 2, however, is to contend that since exploitation is a form of wrongful gain, and since unfairness in the terms of a transaction is not necessary for exploitation, there are two major ways to understand the exploiter's wrongful gains, namely, *unfair gain* and *disrespectful gain*. While unfair gain refers to a situation in which A gains unfairly relative to a fairness baseline, disrespectful gain refers to a situation where A gains from a disrespectful transaction with B that violates the Merely Means Principle.<sup>7</sup> Based on the distinction, in Chapter 3, I introduce and criticise Ruth Sample's account of exploitation (2003). Her account represents what I shall term '*disrespectful exploitation*'. This account states that A exploits B if A gains from a disrespectful transaction with B by taking advantage of B's inferiority. The aim of Chapter 3, then, is to explain the meaning of disrespectful exploitation and how it differs from unfair exploitation.

Having explained the meaning of unfair exploitation and disrespectful exploitation according to the distinction between unfair gain and disrespectful gain, in Chapter 4, I propose and defend a relational notion of the advantage-taking behaviour, which I shall term '*the Relational condition*'. This notion holds that A's taking advantage of B's *weaker agency* (compared to A's agency) is necessary for exploitation. I explain why the Relational condition is better than alternatives, such as those proposed by Steiner (1984, 1987, 2010), Roemer (1982a) and Nicholas Vrousalis (2013), in identifying exploitation in a variety of asymmetrical human relationships. In short, in Part 1, I propose and defend an account of exploitation against leading accounts of exploitation.

Having proposed and defended an account of exploitation in Part 1, I explore *why exploitation is unjust for egalitarians* in Part 2 (chapter 5 and 6). First, the question is dedicated

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<sup>7</sup> I shall explain the Merely Means Principle in Chapter 3.

to egalitarianism, rather than sufficientarianism or prioritarianism, because exploitation is a fundamental form of inequality in that one party in a transaction treats another as inferior. (Phillips, 2017: 110). Therefore, before proceeding to the core argument in Chapter 6, I survey the varieties of egalitarianism, particularly the controversy between distributive and social egalitarianism, to identify the best interpretation of egalitarian justice.

The survey in Chapter 5 will facilitate our understanding of the nature of egalitarian justice and, therefore, the injustice of exploitation from the perspective of egalitarianism. Roughly speaking, distributive egalitarianism in general, and luck egalitarianism in particular, emphasise the distributive aspect of equality; social egalitarianism, in contrast, treats equality as a social and relational notion. Moreover, by scrutinising three objections — namely, *the intrusive objection*, *the disrespectful objection*, and *the harshness objection* — that relational egalitarians level against luck egalitarians, and how luck egalitarians can reply to these objections, we will have a better understanding of how luck egalitarians might respond to exploitation in particular. Chapter 5 functions as a helpful background to the core argument in Chapter 6.

The core argument of Chapter 6 contends that luck egalitarianism cannot deal with exploitation properly, because exploitation can arise in a just society according to luck egalitarian standards. Therefore, to be a complete theory of justice, luck egalitarianism needs an independent principle of non-exploitation, which I will develop at the end of Chapter 6. That is, exploitation is unjust on its own, regardless of its unjust history. Luck egalitarians fail to notice and deal with exploitation that emerges from a just society because they adopt a historical account of exploitation, that is, exploitation must stem from a prior injustice. This view, however, is misleading. Exploitation is, in fact, an ahistorical notion because it may occur even under just background conditions in which no one suffers an unfair disadvantage relative to a doctrine of luck egalitarianism.

Moreover, exploitation is unjust, not because it stems from background injustice, but

*primarily* because of the exploiter's inegalitarian behaviour of pressing her superior advantage upon the exploitee to extract wrongful benefits. Contra the luck egalitarian account of the injustice of exploitation, exploitation is unjust even if it stems from just background conditions, via just steps. Hence, the incompleteness of the luck egalitarian treatment of exploitation suggests that luck egalitarianism needs an independent principle of non-exploitation.

Having proposed and defended an account of exploitation in Part 1 and having explicated why exploitation is unjust for egalitarians in Part 2, in Part 3 (Chapter 7), I examine two questions, namely, whether mutually beneficial and consensual exploitation is morally impermissible and whether it is morally permissible for third parties to interfere with it, *all things considered*. More specifically, I answer these questions by focusing on *sweatshop exploitation*, in which sweatshop owners *exploit and benefit* the poor in developing countries. Even if it is not controversial that exploitation is, *pro tanto*, wrong, some contend that sweatshop exploitation is, all things considered, morally permissible, because sweatshop labour benefits the poor in developing countries. This famous argument is 'the non-worseness claim' (Wertheimer, 1996; Zwolinski, 2009). More precisely, the non-worseness claim states that, since sweatshop exploitation is: mutually beneficial relative to the no-transaction baseline; and since sweatshop owners and workers agree to sweatshop contracts; and since certain instances of sweatshop exploitation generate no negative externalities on any third party; then, even if sweatshops exploit workers in developing countries, they are sometimes morally permissible, all things considered. The non-worseness claim can cover mutually beneficial and consensual exploitation in a variety of social relationships.

Concerning the first question, however, I contend that even if sweatshop labour benefits the poor in developing countries, once we distinguish between the state of affairs of sweatshop exploitation, and the action of the sweatshop owner, it is clear that it is

morally impermissible for sweatshop owners to exploit their employees, all things considered. Concerning the second question, I contend that it is morally permissible for third parties to interfere with sweatshop exploitation if the exploited will be made better off by the interference. Hence, even if sweatshop exploitation benefits the poor, it is morally impermissible; and the third-party interference with sweatshop exploitation is morally permissible when and because the interference will make the exploited better off. Thus, the non-worseness claim fails.

Having introduced three central questions and the arguments that I will present in the thesis, in what follows, I turn to methodological issues that are relevant to my arguments.

## **1.2. The Methodological Issue: Conceptual Analysis**

In Part 1, I address what exploitation is; this requires analysing the concept of exploitation. According to one view, conceptual analysis involves “scrutinizing, systematizing and developing the classifications implicit in ordinary linguistic practices” (Olsthoorn, 2017: 187), by specifying a set of conditions that are individually necessary and jointly sufficient for the definition of a concept. However, given rival accounts of exploitation, some might doubt whether or not a definition of exploitation is possible. Exploitation, it seems, belongs to the category of “essentially contested concepts”, proposed by W. B. Gallie (1955). For Gallie, essentially contested concepts involve endless disputes about the proper uses of a concept, because contestants will and may believe that the concept is best understood by reference to different values (1955: 169-172).

Moreover, contestants acknowledge the fact that others will weight these evaluative elements of a concept differently. According to the essential contestability thesis, people can disagree over moral and political concepts because they can describe these notions

differently and attach different weights to each evaluative element of these notions (Mason, 1993: 50). If the essential contestability thesis is correct, it seems to acknowledge, both *the falsity of the value-free claim* that moral and political concepts are not value-free and *the no superior claim* that one interpretation of an essentially contested concept cannot justifiably claim that it is superior to another. Hence, if exploitation is an essentially contested concept, I can at most provide a conception of exploitation: I cannot claim that my account is superior to rival accounts. However, I shall argue that even if exploitation is an essentially contested concept, it does not follow that we cannot compare rival accounts of exploitation or that one account cannot be better than another. Also, I explain how the notion of exploitation could remain value-neutral in some respect to avoid some substantive controversy. Let us consider ‘the no superior claim’ first and then ‘the falsity of the value-free claim’.

Regarding the no superior claim, one version of the essential contestability thesis claims that different interpretations of an essentially contested concept are all reasonable in the sense that the dispute cannot be resolved by “arguments which have the character that they should persuade any reasonable person who accepts their premises and applies the law of logic correctly” (Mason, 1993: 56). Nonetheless, as Mason indicated, even if a general principle that decides which interpretation is the best among others is unattainable, we could have a strong reason to favour one particular interpretation over another, even though others may reasonably reject that the particular interpretation is the best one (1993: 55). I follow Mason’s view. I believe that one conception of exploitation is superior to another, for example, when and because it can properly identify certain kinds of domestic labour as exploitation and explain its wrongness. Even if moral and political concepts are essentially contested, we can judge the superiority of one interpretation by assessing whether it elucidates the essence of an essentially contested concept. This approach is the natural standard for comparing conceptions of an essentially contested notion. Hence,

even if there is a variety of reasonable interpretations of an essentially contested concept, and even if no single interpretation is the best among others, it is possible to compare two interpretations of the concept. We can claim that one interpretation is better, or more plausible, than another. Thus, the no superior claim fails.

Accordingly, in Part 1, I specify a set of individually necessary and jointly sufficient conditions of exploitation and defend my account against alternatives. Moreover, since my account accommodates two major forms of exploitation — unfair exploitation and disrespectful exploitation — it can identify exploitation in various social relationships. Thus, it is superior to and more comprehensive than the two well-known alternatives in the above section.

Having rejected the no superior claim, I review some positions concerning value-dependent and value-neutral concepts. To begin, a concept is *value-independent* “if its definition can be justified purely in terms of theoretical-explanatory considerations, and not in terms of ethical considerations” (Carter, 2015: 285). In other words, a value-independent concept is not *grounded* on any ethical or moral values (Kramer, 2018: 376). On my understanding, a value-independent concept is a purely descriptive, or strictly non-evaluative, notion. In contrast, a concept is *value-neutral* “if its use does not imply the superiority of any one of a set of contrasting substantive ethical points of view” (Carter, 2015: 285; cf. Kramer, 2018: 376). Although exploitation could be treated as a value-neutral notion in the sense that a farmer exploits her lands, I treat it primarily as a value-dependent notion. Nonetheless, theorists differ in whether we should formulate a value-dependent or value-neutral concept. For example, Dowding (2016: 205) contends that it is advantageous to expand a concept to be as value-neutral as possible so that we do not distort unnaturally the concept to fit a normative principle.<sup>8</sup> In contrast, Ronald Dworkin argues that some

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<sup>8</sup> There are further four reasons to avoid moralising political concepts. See Olsthoorn (2017: 174)

political and moral concepts are *interpretive* in the sense that, even if people agree that these concepts are values, they nevertheless disagree about how these values should be characterised (2011: ch.8; 1986: ch.2).<sup>9</sup> Furthermore, since the concept of exploitation, as I acknowledge, is essentially contested, it is clear that exploitation is a *value-dependent* or *moralised*, notion in that the evaluative elements that it has permit different interpretations and could be weighted differently. I thus take for granted that the notion of exploitation is value dependent.

Having explicated some conceptual issues, I will now outline the content of each chapter.

### 1.3. An Outline of The Thesis

The thesis consists of six chapters corresponding to the three central questions: what exploitation is (ch.2 to 4), why exploitation is unjust for egalitarians (ch.5 and 6) and how to deal with sweatshop exploitation (ch.7).

The first three chapters aim to offer an account of exploitation by critically engaging in contemporary exploitation theorists' works. The core idea is that exploitation is a form of wrongful gain, and there are two major ways to understand how the exploiter gains wrongfully. Consequently, exploitation, in my view, consists of two necessary and jointly sufficient conditions. That is, the exploiter, (a) gains either *unfairly* relative to a fairness baseline, or *disrespectfully* in the sense that it violates *the Merely Means Principle*, or both, by (b) taking advantage of the exploitee's weaker agency, compared to A's agency. Then, Chapter 2 and 3 illustrates (a) and Chapter 4 explicates (b) against alternatives.

Chapter 2 scrutinises Alan Wertheimer's account of exploitation. Of the various

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<sup>9</sup> William Connolly (1993) and Steven Lukes (2005) hold the same view.



accounts of exploitation, his account is perhaps the most prominent. His account represents what I shall term ‘unfair exploitation’, which insists that unfairness is necessary for exploitation. For him, exploitation occurs when *A takes unfair advantage of B*. Wertheimer’s account is ground-breaking in the sense that ‘unfair advantage’ is construed as the unfair terms of a transaction, but not as one’s disadvantages caused by unchosen circumstance, as luck egalitarians contend. However, contra Wertheimer, I argue that unfairness is not necessary for exploitation, though it is an important way to perceive A’s wrongful gain in terms of exploitation. There are cases where the terms of a transaction are fair relative to a fairness baseline, yet A exploits B in some other way. Ruth Sample’s account (2003) provides another way to understand how A gains wrongfully by exploiting B, namely, through disrespectful gain. The core argument in Chapter 2 is that since exploitation is a form of wrongful gain, and since unfairness is an important element, rather than a necessary condition, of exploitation, an exchange could be fair *and* exploitative. It follows that there are two major forms of wrongful gain in terms of exploitation, namely, *unfair gain* and *disrespectful gain*. The conclusion brings us to Chapter 3 in which I will explain the meaning of ‘disrespectful exploitation’ and its relationship to unfair exploitation.

Chapter 3 examines Sample’s account of exploitation. Her account is different from Wertheimer’s account in that, in her view, unfairness in the terms of a transaction is not necessary for exploitation. Instead, Sample argues that *A exploits B if and only if A takes advantage of B in a disrespectful way*. However, contra Sample, I argue that there are cases where A engages in Sample’s formulation of disrespectful relationship, but A does not exploit B because the terms of their transaction are fair relative to a fairness baseline. Hence, the core argument in Chapter 3 is that, for Sample’s disrespectful account to be a plausible conception of exploitation, it has to pass “the fairness test”, that is, the removal of the unfairness in the terms of a transaction is not sufficient to make the transaction

non-exploitative. If so, a transaction could be exploitative, not in the sense that its terms are unfair, but in that it violates the Merely Means Principles by treating the exploitee merely as a means. Moreover, it follows that the disrespectful transaction is morally impermissible, and all of the exploiter's gains are unjustified. This is the meaning of disrespectful exploitation.

Having explained the meaning of disrespectful exploitation, based on the distinction between unfair gain and disrespectful gain, I propose further two connections between exploitation and anti-commodification: external and internal connections. *The external connection* claims that we should not commodify certain things just because the commodification of these things may lead to, or increase the possibility of, individuals being exploited. In contrast, *the internal connection* claims that the commodification of a person in a way that violates the Merely Means Principle, *in itself*, constitutes exploitation. In some cases, when people are commodified, individuals are degraded and treated merely as a means. Thus, the further implication is that we ought not to benefit from disrespectful commodification. If some did, all of the benefits gained from these transactions are morally unjustified, and so the exploiters are not entitled to them. Chapter 2 and 3 jointly explicate one of the two conditions of my account of exploitation: (a) two major forms of wrongful gain in exploitation. In Chapter 4, I shall explicate why (b) — taking advantage of the exploitee's weaker agency — is necessary for exploitation and defend my definition of (b) against alternatives.

Chapter 4 defends a *relational* notion of the advantage-taking behaviour, arguing that A's taking advantage of B's *weaker agency* (compared to A's agency) is necessary for exploitation. I term this *the Relational condition*. Moreover, I shall defend the Relational condition against four alternatives to advantage-taking behaviour. First, contra Roemer's *purely distributive* account (the advantage-taking behaviour is unnecessary for exploitation), which argues that no causal relation is needed to identify exploitation, I argue that

exploitation must involve (b). Second, contra *the Historical account* (taking advantage of a past injustice that B suffers), which argues that a prior injustice is necessary for exploitation, I argue that exploitation need not stem from a past injustice. Third, *the Non-Comparative account* (taking advantage of the exploitee's vulnerability as insufficiency of basic needs) contends that we should focus on the exploitee's absolute, rather than comparative, features. In contrast, I argue that we have to take the relation between A and B as a whole, rather than focus exclusively on B's absolute character. Lastly, contra *the Complex Notion* (advantage-taking behaviour as domination), which argues how exploiters dominate exploitees, I argue that exploitation need not involve domination or other complex notions. Hence, the Relational condition offers a better definition of advantage-taking behaviour than the four alternatives in that it can identify a variety of asymmetrical social relationships and explain why (b) is necessary for exploitation.

Put together, from Chapter 2 to 4, I offer an account of exploitation by reflecting on the main accounts of exploitation. Moreover, my account is more comprehensive than its alternatives in two aspects. First, I resolve the dispute between Wertheimer's and Sample's accounts by turning their controversy into two understandings of wrongful gain in exploitation. My account of exploitation then permits two major ways to understand how A gains wrongfully through exploitation. Second, since I remain open on how people interpret what constitutes a fairness baseline, and since my inclusive definition of (b) can identify a wide range of asymmetrical relationships between parties, my account can identify various forms of exploitation in different social spheres. Having proposed and defended my account of exploitation, in Chapter 5 and 6, I explore why exploitation is unjust for egalitarians.

Before proceeding to explicate the injustice of exploitation, I review the controversy between the varieties of egalitarianism. The detour is because exploitation is a fundamental form of inequality, in that the exploiter treats the exploitee as inferior. A review of the

varieties of egalitarianism will help us better understand what makes exploitation unjust for egalitarians. Chapter 5, then, surveys the controversy between distributive and social egalitarianism about the best way to understand the ideal of equality. Over the past three decades, luck egalitarianism, among others, has been one of the most prominent theories of egalitarian justice; nonetheless, it has also attracted many critiques, especially those from Social and Relational Egalitarianism. Social egalitarians criticise distributive egalitarians for misinterpreting the idea of equality as a distributive notion. Rather, they contend that the ideal of equality should best be construed as a social and relational notion. After introducing the basic ideas of both luck egalitarianism and social egalitarianism, I assess whether or not the three objections that social egalitarians level against luck egalitarians are successful. These are *the intrusion objection*, *the disrespectful objection*, and *the harshness objection*. Reflection on how luck egalitarians reply to these objections will facilitate our understanding of the nature of egalitarian justice. Chapter 5 then serves as a preliminary stage for the core argument in chapter 6. In what follows, I argue that my criticism of the luck egalitarian response to exploitation provides a stronger critique of luck egalitarianism compared to existing relational egalitarian critiques to which luck egalitarians have reasonable or plausible replies.

Chapter 6 provides two distinct ways to understand the injustice of exploitation: *free-standing* and *derivative* views. The Free-standing view holds that exploitation, *in itself*, is an independent injustice, irrespective of whether it stems from just or unjust background conditions, via just or unjust steps. The Derivative view, in contrast, claims that exploitation is unjust if and only if it stems from a prior injustice. Based on the distinction, the core argument of Chapter 6 contends that, since leading luck egalitarians, such as G. A. Cohen and John Roemer, employ the Derivative approach, they fail to notice, and cannot deal with, the exploitation that emerges from a just background via just steps. Therefore, the luck egalitarian account of exploitation is *incomplete* because the historical account of

exploitation they implicitly adopt cannot identify exploitation generated under the luck egalitarian agenda. Consequently, luck egalitarians need an independent principle of non-exploitation, namely, *exploitation as free-standing injustice*, which I develop at the end of Chapter 6. Instead, the Free-standing view maintains that *the anti-egalitarian conduct*—the exploiter’s pressing her superior advantage against the exploitee to extract wrongful gain—constitutes the fundamental injustice of exploitation. Hence, Chapter 5 and 6 jointly answer why exploitation is unjust for egalitarians and, more importantly, the exploitation objection poses a challenge to luck egalitarianism.

Having analysed the nature of exploitation (chapters 2 to 4) and having established whether and why it is pro tanto wrong (chapters 5 and 6), we now turn to consider whether exploitation is all things considered wrong and whether actions should be taken to eliminate it (chapter 7). Chapter 7 aims to answer how we ought to respond to sweatshop exploitation that benefits the poor in developing countries. I scrutinise *the non-worseness claim*, endorsed by Matt Zwolinski (2007). Roughly stated, this holds that mutually beneficial and consensual exploitation is morally permissible, all things considered. It follows that the state and other third parties should not interfere with sweatshop exploitation. However, when we distinguish between the moral assessment of the state of affairs and our moral assessment of the exploiter’s action in our analysis of sweatshop exploitation, it is clear that it is misleading to claim that sweatshop exploitation is morally permissible just because it benefits the poor. Once we distinguish *discretionary exploiters*, who can pay non-exploitative wages at little cost, from *structural exploiters*, who pay non-exploitative wages at fatal cost, it is clear that sweatshop exploitation by discretionary exploiters is morally impermissible, all things considered, even though sweatshop exploitation benefits the poor.

Moreover, in the case of structural exploiters, although paying non-exploitative wages is very costly for them, they at least have a moral duty to act jointly with other agents to correct structural exploitation. Besides, concerning whether or not it is morally permissible

for third parties to interfere with sweatshop exploitation, contra Zwolinski, I contend that it is morally permissible for third parties to interfere with sweatshop exploitation when and because they can ensure that the exploited will be made better off. Hence, sweatshop exploitation is morally impermissible. The impermissibility, in some cases, justifies third-parties' protection of the exploited.

In sum, the thesis has the following contributions. First, it provides a critique of leading accounts of exploitation (those of Wertheimer, Sample, Steiner, Roemer, etc.). Drawing on my critique, I outline and defend my account of exploitation. Second, I illustrate why the notion of exploitation is crucial for our thinking of egalitarian justice. While relational egalitarians have criticised luck egalitarians for failing to capture the wrong of inequalitarian relationships, I show that luck egalitarianism is not vulnerable to many of the objections that many relational egalitarians have levelled against it. Rather, luck egalitarianism cannot properly capture the wrong of exploitation. Third, concerning the practical case of sweatshop exploitation, I rebut the claims that mutually consensual and beneficial exploitation is morally permissible and that third parties should not interfere. We thus have reason to regulate sweatshop labour in developing countries. These are the contributions the thesis achieves.

## 2. Exploitation and Unfairness

In Part 1 (Chapter 2 to 4), I aim to offer an account of exploitation by critically engaging with contemporary accounts of exploitation, particularly Alan Wertheimer (1996) and Ruth Sample (2003). In general, exploitation consists of two elements: (1) the exploiter gains by (2) taking advantage of some feature of the exploitee (Vrousalis, 2018: 2). Chapter 2 and 3, then, examine the nature of the exploiter's wrongful gain and Chapter 4 discusses various conceptions of the advantage-taking behaviour. Consequently, at the end of Part 1, I propose and defend my account of exploitation against alternatives. The core argument in Chapter 2 and 3 is to contend that since exploitation is a form of wrongful gain, and because the unfairness in the terms of a transaction is not necessary for exploitation, there are *at least* two ways to understand the quality of the exploiter's wrongful gain, namely, unfair gain and disrespectful gain.

Unfair gain and disrespectful gain are individually sufficient for exploitation when equipped with my conception of advantage-taking behaviour. To be precise, unfair gains refer to a situation where the exploiter gains unfairly relative to a fairness baseline; in contrast, disrespectful gains refer to a situation where the exploiter gains from participating in a transaction that ought not to take place at all because it treats the exploitee as merely a means. As such, in Part I, I outline two forms of exploitation: *unfair exploitation* and *disrespectful exploitation*. Roughly put, in unfair exploitation, A exploits B when A takes advantage of B's inferiority to gain unfairly. In disrespectful exploitation, A exploits B when A takes advantage of B's inferiority to gain benefits in ways that A treats B merely as a means. Having delineated the outline of my account of exploitation, let us turn to the arguments in Chapter 2.

In Chapter 2, I introduce Alan Wertheimer's account of exploitation, which I shall term *unfair exploitation* and argue, contra Wertheimer, that unfairness in the terms of a

transaction is not a necessary condition of exploitation. After the publication of his book *Exploitation* in 1996, Wertheimer's account of exploitation has represented the most prominent account of exploitation over the last two decades. Based on Joel Feinberg's discussion of 'harmful exploitation',<sup>10</sup> Wertheimer substantially advances the discussion of the concept of exploitation by asking a further question: that is, can a mutually beneficial and consensual transaction still be exploitative? If it can, what makes such a transaction exploitative? A critical examination of his account is where I begin my research on exploitation.

The structure of Chapter 2 is as follows. In section 2.1., I introduce Wertheimer's account of exploitation, particularly his distinction between *taking unfair advantage of another's unfairness* and *taking advantage of another's unfairness*. Section 2.2. scrutinises Wertheimer's understanding of what makes a transaction unfair, and, therefore, exploitative, according to his idea of the hypothetical market price. Section 2.3. presents Richard Arneson's objection to Wertheimer's hypothetical market price as a fairness baseline, and how Wertheimer might respond. Section 2.4. examines Allen Wood's objection to Wertheimer's claim that the unfairness in the terms of a transaction is necessary for exploitation and how Wertheimer might respond. The disagreement between Wood's and Wertheimer's account of exploitation represents two distinct ways of defining the nature of exploitation. In section 2.5., I argue that exploitation is a form of wrongful gain, and, contra Wertheimer, the unfairness is not necessary for exploitation, and, therefore, there are two fundamental ways to perceive the quality of the exploiter's gain: as unfair gain and disrespectful gain. Hence, contra Wertheimer, the fact of unfairness in the terms of a transaction is not necessary for exploitation. Section 2.6. is the conclusion.

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<sup>10</sup> Harmful exploitation refers to a transaction in which the exploitee gains less than no-transaction. See Joel Feinberg (1990: 177-210) for a discussion of harmful exploitation.



## 2.1. Unfair Exploitation: Alan Wertheimer's Account

I shall start with some contextual information that is helpful to locate Wertheimer's position. First of all, Wertheimer develops a fairness-based, micro-level account of exploitation: an account based on a liberal egalitarian political theory framework (1996: x). More precisely, unlike Marxism which considers exploitation from a social-structural perspective, Wertheimer's account focuses on how agents in the market bargain or agree with each other, and how their interactions become exploitative transactions. However, his micro-level focus is more than an attempt to tackle a different problem from the problems Marxists have attended. Instead, it indicates his rejection of the necessary connection between exploitation at the micro-level and background injustice. As we shall see, merely taking advantage of an injustice would not constitute exploitation for Wertheimer.

Second, like most exploitation theorists, Wertheimer focuses on *mutually advantageous and consensual exploitation*,<sup>11</sup> rather than harmful and involuntary exploitation. The reason is that the moral wrongness of harmful and non-consensual exploitation is clear. People often expect that the exploited is harmed and left worse off after transacting with exploiters. We also worry that the exploited did not properly consent to the transaction. In either case, harmful and involuntary exploitation is *pro tanto* morally wrongful. Besides, the moral wrongness of mutually advantageous and consensual exploitation is less clear. For him, it is the unfairness of the transaction's terms that makes mutually advantageous and consensual exploitation wrongful. Hence, his account represents what I shall term '*unfair exploitation*', that is, A exploits B if and only if A takes unfair advantage of B in terms that their transaction is unfair relative to a fairness baseline. Now let me introduce each element in Wertheimer's account.

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<sup>11</sup> We will see how Wertheimer defines 'mutually advantageous', but for now we need only know that he is dealing with a specific form of exploitation.

### 2.1.1. The Elements of Exploitation

Wertheimer's understanding of exploitation is based on modern mainstream economics, which seeks to explain and predict how people interact with each other in the market by assuming them to be rational and self-interested agents. They also assume that a commodity's price is determined by supply and demand in the market, rather than – as many classical economists maintain – by the fixed amount of labour power within a commodity.<sup>12</sup> Modern mainstream economics reject 'the labour theory of value': the theory that the value of a commodity is determined by the amount of labour power within that commodity.<sup>13</sup> Wertheimer develops his theory of exploitation using these sorts of assumptions. He considers how agents bargain about the price of a commodity, and how they share the social surplus generated by any resulting transaction.

Wertheimer distinguishes between *harmful exploitation* and *mutually advantageous exploitation*. Whether the alleged exploitation at stake is harmful or mutually advantageous is, as Wertheimer suggests, decided by "its net effect on B" compared to B's status quo before the transaction, that is, B's "no-transaction baseline" (1996: 20).<sup>14</sup> Accordingly, *harmful exploitation* refers to a situation where the agreement is beneficial to A but harmful to B, because B is worse-off compared to his no-transaction baseline (Wertheimer, 1996: 20-21; 1997a: 897). Thus, the wrongness of harmful exploitation is more serious than mutually advantageous exploitation.

Concerning *mutually advantageous exploitation*, Wertheimer refers to a transaction after which both A and B are better off than their no-transaction baseline (1996: 14). In mutually

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<sup>12</sup> See Saad-Filho & Johnston (2005) and David Dequech (2014).

<sup>13</sup> See Richard Arneson (1981), G. A. Cohen (1979, 1983a), and Peter Dooley (2005), for a discussion of the labour theory of value.

<sup>14</sup> Wertheimer refers to the exploiter as A, and to the exploitee as B. In the rest of chapters, A refers to the exploiter and B refers to the exploited.

advantageous exploitation, the transaction must generate a social surplus between them, making both parties better off (Wertheimer, 1996: 14-20). Thus, while harmful exploitation can be zero-sum, negative-sum, or positive-sum,<sup>15</sup> mutually advantageous exploitation must be, by definition, positive-sum.<sup>16</sup> Having distinguished between harmful and mutually advantageous exploitation, I explain what makes mutually advantageous transactions exploitative on Wertheimer's account.

According to Wertheimer, "A exploits B when A takes unfair advantage of B" (1996: 16, 207). How to construe his understanding of 'taking unfair advantage' is crucial here. The transaction can be *unfair*, Wertheimer argues, both in terms of its *outcome* and the *process* that generates the unfair outcome (1996: 16). Let us start with the unfairness of the process. In terms of the process of a transaction, Wertheimer focuses on the role of consent. He questions whether a defect of consent is necessary for exploitation. In reply, he examines several possibilities that may result in a defect of consent, such as inequality of bargaining power, hard circumstances, and false consciousness. For Wertheimer, however, a transaction can be exploitative but voluntary and, therefore, a defect of consent is not necessary for exploitation. However, since the focus of the thesis is not the role of consent, and since it is widely accepted that exploitation is often voluntary, I shall presume that the exploitee's consent to an exploitative contract is not defective and leave the issue aside.<sup>17</sup>

Let us turn to how Wertheimer considers the outcome to be unfair. For him, a transaction's outcome has two elements: the benefit to A and the effect on B. With respect to the benefit to A, the crucial point is that, *unless A obtains some benefits through the transaction*

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<sup>15</sup> Harmful exploitation is zero-sum in that A gains what B loses and the total sum is zero; it is negative-sum in that A gains less than what B loses and the total sum is negative; it is positive-sum in that "A gains by imposing a loss on B that is less than A's gain" and the total sum is positive (Wertheimer, 1996: 18-20). Since harmful exploitation is not his main concern, I shall leave his discussion of harmful exploitation aside.

<sup>16</sup> A transaction that benefits A but which leaves B no better off but also no worse off, is not mutually beneficial exploitation according to this definition.

<sup>17</sup> In the rest of discussion, I will focus only on the outcome of a transaction. See Wertheimer (1996: 247-277) for a detailed discussion of consent in exploitation.

with B, the transaction is not exploitative.<sup>18</sup> For example, during the transactions, A can abuse, oppress, or discriminate against B, but none of these wrongful treatments by A leads to exploitation if A does not benefit from these behaviours compared to his no-transaction baseline (Wertheimer, 1996: 208). With regard to the effect on B, the resulting distribution of social surplus must be unfair to B. On Wertheimer's view, a transaction is unfair and, therefore, exploitative just because the distribution of social surplus, generated by the transaction, is unfair to B relative to a fairness baseline. Now it is important to illustrate how Wertheimer perceives market transactions.

As Wertheimer sees it, any potential transaction in the market involves a range of bargaining prices, whose lower and upper limits are fixed, respectively, by A's and B's reservation prices. The reservation price is "the value that the person must receive if he or she is to agree to the transaction" (Wertheimer, 1996: 20, 211-212).<sup>19</sup> Hence, each party's reservation price will create a *zone of agreement*, and any outcome generated within this zone will result in a social surplus. For example, suppose that A is a car seller and that B is a car buyer. Suppose that B will not pay more than £6,000 for A's car and that A will not sell to B for less than £3,500. A's reservation price is £3,500, and B's reservation price is £6,000. The space between A's and B's reservation prices constitutes the zone of agreement. Any outcome that locates within this zone is a social surplus. If they agree on, say, £4,500, their social surplus is £2,500: B receives the car for £1,500 less than his reservation price (£6,000), and A receives £1,000 more than his reservation price (£3,500). The transaction between them is mutually advantageous that both A and B gain benefits compared to the no-transaction baseline, and they are better off after the transaction.

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<sup>18</sup> Wertheimer considers that A's gain can take many forms, such as entertainments, or an infant benefiting from their adoptive parents, or in psychotherapy, the doctor gains sexual pleasure, but not limited to surplus value. See Wertheimer (1996: 210).

<sup>19</sup> Wertheimer distinguishes further A's actual reservation price and A's morally justified reservation price when describing the details of A's decision-making process. A's morally justified reservation might be more or less than A's actual reservation price (Wertheimer, 1996: 211-214).

However, as we saw, Wertheimer also thinks that even if both A and B benefit from the transaction, it will still be exploitative if the social surplus generated by them is unfairly distributed between them. Take a garden-variety case of alleged exploitation, for example. Suppose that an unexpected storm hits a village. Residents rush to the hardware store to buy a shovel, the price of which is raised from £20 to £40 by the store owner, A. B is willing to pay £40 for the shovel, because, in his view, the shovel is worth more than £40 to him. Then clearly, both parties gain. Nevertheless, B might correctly feel exploited because A seems to take advantage of the disaster to raise the price of the shovel, as it is unreasonable to expect B to pay £40. The price of the shovel is *unfair* to B because the social surplus generated from their transactions is unfairly distributed between them.

If, however, exploitation is conceived of as Wertheimer does – as a distributive issue – then the morally distinctive quality of exploitation lies in the unfair distribution of social surplus. Then, the fairness relevant to exploitation is *transaction-specific fairness*, rather than *background fairness* (Wertheimer, 1996: 216). If so, exploitation *only occurs if* the terms of a transaction are unfair to B, whereas if B receives a fair amount of social surplus, no exploitation occurs (Wertheimer, 1996: 208). *The unfairness of social surplus distribution becomes an independent criterion of exploitation*, at least for a mutually advantageous and consensual transaction to be exploitative.

For Wertheimer, the upshot is that the unfairness of the transaction – the unfair distribution of social surplus – is *necessary* for exploitation. Consequently, “[n]o unfairness in the terms of the transaction, no exploitation” (Wertheimer, 1996: 208).<sup>20</sup> Nonetheless, some may argue that the unfair terms of a transaction are *not* necessary for exploitation. For them, a transaction could be fair *and* exploitative and taking advantage of B’s disadvantageous situation, in itself, constitutes exploitation. In response, we need to

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<sup>20</sup> Note that the unfair outcome is not sufficient for exploitation on Wertheimer’s view.

introduce Wertheimer's principal distinction between taking advantage of another's unfair circumstance and taking unfair advantage of another's unfair circumstances, which is one of Wertheimer's major contributions to exploitation theory (Phillips, 2017: 106). The distinction marks a critical divergence from other contemporary theorists of exploitation. If the unfairness is necessary for exploitation, taking advantage of B's unfairness does not suffice for exploitation; whereas, if taking advantage of B's unfairness is sufficient for exploitation, the unfair terms of a transaction is not necessary for exploitation. Let us turn to it now.

### **2.1.2. The Distinction Between Taking Advantage of Unfairness and Taking Unfair Advantage of Unfairness**

According to Wertheimer (1996: 298-299), *taking advantage of unfairness* (or misfortune) should be distinguished from *taking unfair advantage of unfairness* (or misfortune).<sup>21</sup> To see how the distinction operates, consider the case of the greedy snowstorm rescuer. Suppose that A is a rescuer and the price for a rescue is £50 under normal circumstances. B is stranded in the severe snowstorm, willing to pay £250 to be rescued. A offers to rescue B for £50. Given that £50 is below B's reservation price, B accepts. In this case, even if A takes advantage of B's misfortune, given that the price is fair to B, A does not take *unfair* advantage of this misfortune. So, no exploitation occurs. Consider another case. Lawyers sometimes earn their living from their customers' unjust situations, but this would not be considered exploitation when the retainer fees are fair relative to a fairness baseline. Thus, on Wertheimer's view, simply taking advantage of B's suffering a past injustice will not

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<sup>21</sup> Chapter 4 will further distinguish different kinds of advantage-taking behaviour, such as taking advantage of another's injustice, vulnerability, or bargaining inferiority. Chapter 4 will also consider that B might be worse off but not unfairly so. Taking advantage of another's unfairness, then, will be shown to be different from taking advantage of another's misfortune. These differences do not matter here.

constitute exploitation (1996: 70, 95, 298-299).

Wertheimer reminds us that his aim is “to distinguish the wrong-making characteristics of exploitation from other forms of wrong” (1996: 13). People can wrong one another in many ways, but we should not confuse a charge of exploitation with other forms of wrong, such as manipulation or domination. Indeed, these are serious wrongdoings, but they are not cases of exploitation. An account of exploitation is deficient if it fails to explicate the distinctive character of exploitation: when explaining the wrong of exploitation, an account cannot simply appeal to other forms of wrong. For example, Robert Goodin argues that to take advantage of B’s vulnerability constitutes exploitation (1987) and to exploit is deemed a violation of our duty toward the vulnerable (1986: 109-144). The problem with this vulnerability approach to exploitation, for Wertheimer, is that it simply appeals to the concept of vulnerability.<sup>22</sup> It seems right to argue that we should not exploit the vulnerable, but the point is that the vulnerable are not identical to the exploited. People can be exploited and be non-vulnerable and vice-versa. To take advantage of another’s vulnerability may constitute a form of wrong, but, in Wertheimer’s view, this form of wrong is not unique to exploitation. A can take advantage of B’s vulnerability without exploiting B when the terms of their transaction are fair relative to a fairness baseline. For example, a doctor taking advantage of her patients’ vulnerability to gain benefits. This case is not exploitation if the terms of their interaction are fair relative to a fairness baseline. Similarly, other theorists of exploitation endeavour to connect exploitation to other forms of wrong, such as domination, oppression, or coercion, but none of these explicates the nature of exploitation. Hence, Wertheimer’s *transaction-specific* account of exploitation poses a challenge to theorists who view taking advantage of B’s unfairness as exploitation.

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<sup>22</sup> I will criticise the vulnerability approach in Chapter 4.

However, as we will see in Chapter 3, to take advantage of another's unfair circumstance may constitute exploitation even if the terms of the transaction are fair according to a fairness baseline. I will take a stand on the issue at stake at the end of this chapter. However, for now, what remains unspecified in Wertheimer's account of exploitation is how he understands the idea of unfairness. We need to clarify Wertheimer's understanding of a fairness baseline to appreciate what he means by fairness.

## **2.2. The Hypothetical Perfect Market Price as a Fairness Baseline**

Before proceeding, we should note two things. The first is that the hypothetical market price, as Wertheimer (1996: 216) emphasises, is not a principle for the distribution of resources or opportunity. Even if the hypothetical market price can be rightly viewed as a principle of fair transactions, it does not follow that such a principle can be applied to the issue of social justice. A principle of fair distribution that governs interpersonal transactions should not be confused with a principle of social justice that governs basic social institutions. Second, Wertheimer is fully aware of the limitations of a hypothetical perfect market price. This ideal price, he concedes, has two restrictions. One is that, even if we are situated in a perfectly competitive market, exploitation may take place, such as the systemic or structural exploitation that Marx and Marxists emphasise, though Wertheimer did not specify the meaning of it (1996: 217). Another is that a hypothetical market price is not always a relevant measure; in many cases, it is unknown or simply inapplicable (Wertheimer, 1996: 234-236). We should not overestimate the force of a hypothetical market price. Let us see what such a price is.

### **2.2.1. The Hypothetical Perfect Market Price**



What is the character of the price generated in a hypothetical perfect market? Wertheimer assumes there would be many buyers and sellers, perfect information, and “all buyers and sellers are price-takers” in a hypothetical perfect market (1996: 217). A hypothetical market is *competitive* such that no one can affect the price of any potential transactions. Agents in such a market need not bargain for a commodity’s price, and the bargaining process has no place in a perfectly competitive market. With perfect information and competitiveness among market agents, any commodity’s price represents its cost; otherwise, sellers will choose to withdraw from the market.

Further, all buyers can either take the commodity at the fixed price or choose not to buy it: “after all, a competitive market price reflects *the cost of providing the good or service*” (Wertheimer, 1996: 233, my italics). In a perfectly competitive market, everyone has to compete with each other. A seller will ruin her business either when she charges too little to cover her costs, or when her commodity’s price is higher than her potential competitors’. As a result, the price of any commodity in a perfectly competitive market will reflect the costs of supplying the commodity. In brief, any commodity’s hypothetical competitive market price reflects its production cost, and so no agent can affect the price.

### 2.2.2. The Hypothetical Market Price as a Benchmark of Fair Distribution

Why, however, is a price fixed at the cost of production a *fair* one? Recall the reason why we need criteria for a fair transaction. In Wertheimer’s definition of exploitation, A exploits B when, and only when, A takes *unfair* advantage of B. Although both parties benefit from the transaction, somehow the distribution of social surplus is unfair to B according to a fairness baseline. Thus, a benchmark of fair division is needed to indicate why a mutually advantageous transaction is unfair to B (Wertheimer, 1992: 222, 1997b: 1221).

We should also bear in mind that the hypothetical perfect market price does not

reflect “any deep principle of desert or value” (Wertheimer, 1996: 231). In explaining this, Wertheimer attempts to point out that, if an NBA basketball player’s salary is more than that of a rural doctor, this does not mean that the NBA basketball player’s job is morally more valuable than the doctor’s. Furthermore, that one productive person can obtain more rewards than another, does not mean that the less productive person does not correspond to any deep principle of desert or justice. Yet, if the hypothetical market price does not ground anything of value, one might wonder how it is a benchmark of a fair transaction. As Wertheimer writes:

[E]ven though a competitive market price does not reflect a deep principle of justice, it does reflect a crucial moral dimension of the relationship between the parties to the transaction. The competitive market price is a price at which *neither party takes special unfair advantage of particular defects in the other party’s decision-making capacity or special vulnerabilities in the other party’s situation*. It is a price at which the specific parties to this transaction do not receive greater value than they would receive if they did not encounter each other. It may or may not be a “just price,” all things considered, but it may well be *a nonexploitative price, for neither party takes unfair advantage of the other party*. (1996: 232, my italics)

Two distinctive advantage of the hypothetical market price can be obtained from this paragraph. First, the ideal market price is where *sellers and buyers can receive no excessive benefits*. The price corresponds to Wertheimer’s emphasis that exploitation involves the unfair distribution of social surplus to the exploitee. The second suggests that the hypothetical market price’s moral attraction is that *nobody takes special unfair advantage of particular defects in the other party’s decision-making capacity or special vulnerabilities in the other party’s situation*. By stipulating how we define the competitive market price, the terms of trade do not depend on any special or particular features of the party with whom one is contracting. While people can choose between the two distinctive characters for interpreting the moral attraction of the hypothetical market price, I interpret Wertheimer as contending that we

should take them as two necessary and jointly sufficient conditions for exploitation. Now I offer my explanation.

#### 2.2.2.1. No Excessive Benefits Can Be Taken

As we have seen, Wertheimer regards exploitation as a micro-level wrong. For him, taking advantage of another's unjust background conditions — the macro-level condition — cannot *solely* constitute wrongful exploitation; rather, to be exploitation, the unfair terms of a transaction — the micro-level distribution — are a necessary condition. Bearing Wertheimer's logic in mind, we now turn to the first advantage of the ideal market price.

I suggest that we should not overlook Wertheimer's emphasis that the hypothetical market price reflects the seller's costs.<sup>23</sup> As the economist Michael Parkin points out, "[t]he cost of producing one more unit of a good or service is its marginal cost. Marginal cost is the minimum price that producers must receive to induce them to offer one more unit of a good or serve for sale" (2018: 150). Therefore, a supply curve represents a marginal cost curve (*ibid.*). Wertheimer's hypothetical market price then is in line with mainstream economics and has two features. One is that any commodity's cost represents the minimum price for the very existence of goods and services provided in the hypothetical competitive market. Ideally, no one will provide goods and services below their cost. This first feature simply explains how things work in the economic domain. In this sense, Wertheimer believes that no one can complain about paying the cost of any commodity (1996: 233, 236). Another feature is that no one can take excessive benefits when any commodity's price just reflects its cost. This suggests that the price above the commodity's cost would be considered excessive benefits and, therefore, we may inquire how benefits above the

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<sup>23</sup> Both Richard Arneson (2013) and Ruth Sample (2003) overlook this emphasis.

cost of a commodity come about.<sup>24</sup>

What is more, if we follow Wertheimer's emphasis on the unfairness of the terms of the transaction, the advantage of the hypothetical market price would appear to be its appropriation of that price that no one can complain about it, since no unfairness of the terms can be taken from transactions in the hypothetical market. In the last sentence of the cited paragraph, we can see his emphasis that the competitive market price "may well be a nonexploitative price, for neither party takes unfair advantage of the other party" (Wertheimer, 1996: 232). Whenever he uses 'taking unfair advantage', it refers to the unfairness of the terms of the transaction. Thus, his focus still lies in the micro-level distribution. This is the first distinctive character of the ideal market price.

#### **2.2.2.2. No One's Special Vulnerability or Bargaining Inferiority is Being Taken of**

Another salient character of the ideal market price is that nobody can take unfair advantage of another's special vulnerability or bargaining inferiority. Wertheimer is aware of the role that background conditions play in exploitative transactions. In his discussion of *Unconscionable Contracts*, Wertheimer analyses the notion of bargaining power (1996: 64-70). Wertheimer distinguishes several notions, such as bargaining potential, bargaining incapacity, and bargaining weakness; these factors may affect the result of a transaction (1996: 64-68).

Moreover, in *Exploitation of Student-Athletes*, Wertheimer asserts that the hypothetical market price varies by reference to different background conditions — current

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<sup>24</sup> This is quite problematic. As Arneson (2013) argues, no market agents are prevented from paying more than the hypothetical market price. It is neither unfair nor exploitative to pay more than the cost of a commodity when one's moral incentive requires her to do so. Wertheimer owes us an explanation for the reason that when the price of a commodity is above its cost, it would be considered 'excessive benefits'.

or hypothetical (1996: 93-95). For instance, when the tuition fees for higher education in a country are unaffordable for many, and when the current background condition is unequal to specific groups, some students might be willing to accept the offer to become a student athlete in order to gain access to higher education. However, things differ under an ideal background condition. When education in a country is free for all citizens, students with lower familial income need not accept the university's offer to be a student athlete, and the wage for the university to recruit student athletes might increase. Under different background conditions, the hypothetical market price of a commodity appears to differ. These two cases show that Wertheimer does worry about the role of the macro-level features in exploitative transactions.

Now consider another way to interpret the moral character of the hypothetical market price. Rather than focus on the unfair profits, Wertheimer argues that *the hypothetical market is non-exploitative because it is a price that means no one can take advantage of another's vulnerability or lack of bargaining power*. Since the hypothetical competitive market is where all the sellers offer the same price for a particular commodity and where all the buyers can only decide to take that price or leave it, no unequal treatments can occur in such a market, and no exploitation can take place. The perfect competition among all the sellers results in a situation in which no one can take advantage of another's special vulnerability or bargaining inferiority. Thus, since everyone, as buyers or sellers, receives equal treatment, the price generated in the hypothetical market is non-exploitative. This is another way to understand the moral character of the hypothetical market price.

Having explained Wertheimer's account of exploitation and his idea of the hypothetical market price, I present two main critiques of Wertheimer's account of exploitation. One, provided by Arneson (2013, 2016), contends that the hypothetical market price is not a fair price. The other, proposed by Allen Wood (1995, 2016), insists that the distributive unfairness is neither necessary nor sufficient for exploitation.

### **2.3. Richard Arneson's Critique of The Hypothetical Market Price**

Let us start with Arneson's critique of Wertheimer's account of exploitation. For Wertheimer, a transaction is exploitative because the distribution of the social surplus generated by them from a transaction is unfair relative to the hypothetical market price. However, Arneson contends that the hypothetical market price is not a fair price.

#### **2.3.1. The Hypothetical Market Price is not a Fair Price**

To take unfair advantage of another is widely shared as the general formulation of wrongful exploitation (Arneson, 1992; Zwolinski & Wertheimer, 2017). However, all fairness-based accounts of exploitation confront a crucial issue: there will be as many competing conceptions of exploitation as there are theories of fairness (Arneson, 1992: 350). Fairness-based accounts of exploitation need to defend a conception of fairness underlying their views. Arneson finds implausible the conception of fairness to which Wertheimer's account appeals. He argues that the price in a hypothetical competitive market is not a fair price because it has no moral significance.

Arneson's objection consists of two arguments. The first is that agents (both sellers and buyers) in a hypothetical competitive market can do better than just take the competitive market price or leave it, especially when morality requires that they do so (Arneson, 2013: 402). To elaborate, agents in the ideal market have options other than taking the competitive market price, and more importantly, the departure from the competitive market price is not necessarily unfair. People's compliance with moral requirements may result in a change in the market price. For instance, the fair-trade movement illustrates how consumers' motivation to behave as they ought – namely, to

reduce producers' deprivation – changes a commodity's price, such as coffee beans or bananas. In this case, the consumers will be willing to pay more if this improves the producers' situations, and this movement did change the market price and thus the producers' situation (MacAskill, 2015: 158-167).

Second, and more importantly, since the market price reflects people's preference of all kinds and is morally arbitrary, it contains no substantive moral property, such as fairness or being non-exploitative (Arneson, 2013: 402-403). For Arneson, market prices change when people's preferences change. Preferences determine the market prices whether these preferences reflect moral, immoral or amoral reasons (or, indeed, whether they reflect reasons at all). Because of this, "there is nothing normative about market prices and there should be no presumption that competitive market prices are by any substantive moral standards fair or non-exploitative" (2013: 403). Hence, the market price that lacks moral significance cannot ground a fair price.

### 2.3.2. Wertheimer's Response

Wertheimer, I believe, would agree with Arneson on the first argument. He acknowledges that the hypothetical market price does not reflect "any deep principle of desert or value" (Wertheimer, 1996: 231). The fact that a lawyer's salary is higher than a nurse's salary does not mean that being a lawyer is morally more valuable than being a nurse. Moreover, he would agree that agents can do better than just take the fixed market price even in the hypothetical competitive market and that the upshot of their aggregate behaviours that reflect moral reasons may be *a fairer price* than the ideal market price. For instance, if justice demands an employer to offer her employee a sufficient wage which is above the average market wage, nothing prevents her from so doing by reducing her own profits. Wertheimer does not presume that the hypothetical market price is the only plausible benchmark of

fairness in the market.

However, Wertheimer would disagree with Arneson on the second argument. One key element of the hypothetical market price proposed by Wertheimer is that it represents nothing more than *the cost of any commodity* (1996: 218, 224-226, 233). *By definition*, the hypothetical price would not fluctuate along with people's preferences, because there is no bargaining in the ideal market. Rather, it merely reflects the seller's production cost. The hypothetical market price that reflects the seller's cost of production is a fair price to sellers and buyers as neither gain excessive benefits from the transaction. On the other hand, regarding cases where the market changes in response to consumers' willingness to do good, Wertheimer could reply that these changes occur precisely because relevant markets are imperfect. Multinational corporations affect people's terms of transactions, by monopolising distribution channels of raw materials, so upstream producers cannot but accept unprofitable prices for those raw materials. What fair-trade movements do, Wertheimer could say, is push the market price towards perfection, by making sure that it reflects producers' production cost.

Wertheimer and Arneson, then, have different things in mind when they refer to the substance of the hypothetical market price. For Arneson, the price fluctuates in accordance with market agents' preferences. By contrast, whenever Wertheimer uses the term, he refers to the cost of any commodity. Arneson might be right to argue that when the market price reflects people's preferences, it carries no normative implications. However, this is no objection to Wertheimer's account, since, for Wertheimer, the hypothetical market price amounts to the cost of any commodity and would not be influenced by people's preferences. In the hypothetical competitive market, where there are sufficient buyers and sellers, no one can raise the price of any commodity above the cost of producing it. Whenever someone wants to do so, there will always be other sellers willing to supply that commodity at a lower price. The perfect competition of the hypothetical market will make



any commodity's price represent the cost of production. Thus, Wertheimer and Arneson have different understandings of a hypothetical market price.

What moral substance, then, does the hypothetical market price have? Wertheimer answers that this price is the one that transactors would agree to when they cannot take special *unfair* advantage of particular defects in another's *bargaining inferiority or special vulnerability* in another's situation. This answer is not clear: two kinds of interpretations can be obtained.<sup>25</sup> As I have suggested, the hypothetical market price has two distinctive features. In reply to Arneson, perhaps we should not be distracted by someone's 'bargaining inferiority or special vulnerability' being taken advantage of; instead, the focus should be on the fact that no one can take 'unfair' advantage of another. No bargains are needed in the ideal market, and the bargaining process will generate no social surplus. No bargaining-generated social surplus entails no unfair social surplus, and, therefore, no unfair advantage. So, the hypothetical market price must be non-exploitative in the sense that no unfair profits can be taken. The hypothetical market price at least contains one salient moral character: no one can complain that someone has taken special *unfair* advantage of them. Hence, the hypothetical market price is non-exploitative to all the market interactors.

### 2.3.3. Other Possible Fairness Baselines

A fairness baseline has to define the kind of good to be distributed and the distributive standards for that good (Ferguson, 2018: 4). Wertheimer's hypothetical market price is just one plausible fairness baseline, among others. I hold *a pluralistic view* that there are many

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<sup>25</sup> For example, Arneson (2013) regards Wertheimer's account of exploitation as concerning the unfair division of social surplus. This interpretation is underpinned by Sample (2003, 2016, 2017). However, Arneson (2016) interprets Wertheimer's account of exploitation as domination. The two different interpretations are also indicated by Snyder (2017: 241-249). See also Nicolas Vrousalis (2016).

plausible, competing baselines of fair distribution in determining when and why the allocation of social surplus and burdens in a specific domain is fair or unfair. For example, Mayer proposes that A exploits B when A fails to benefit B *sufficiently* (Mayer, 2005: 318-322; 2007a: 142; 2007b: 608).<sup>26</sup> On this view, a baseline is fair when B benefits sufficiently from the interaction with A. For instance, the sufficientarian benchmark of fair distribution might apply to the employment relationship, where employers have a *prima facie* duty to pay wages that satisfy employees' basic needs.

Next, Thomas Aquinas, Martin Luther, Thomas Hobbes, Hugo Grotius, Adam Smith, endorsed the *just price theory* as a baseline of fair distribution (Reiff, 2013: 51). The general idea of the just price theory is that a price is fair or just when it equates to the cost of producing a commodity. Just price theory, thus, appreciates the idea of equal exchanges. Take for example, price gouging where a seller raises the price of limited basic goods to gain unfairly. Just price theory might accuse the seller of exploiting the buyers, where the price gouger gains more than the cost of the limited basic goods. However, many have questioned the just price theory's plausibility because the value theory it must endorse has been widely rejected by the mainstream economists.

Besides, Michael Kates adopts the Rawlsian approach to select a standard of fair wages. Very briefly, for him, people in Rawls's original position (where they do not know their specific information and their social position) will choose to guarantee "the maximum level of income for the least advantageous party" (Kates, 2019: 39-44). Kates' approach is different from the sufficientarian approach and the just price theory in that his approach does not offer a substantive criterion of fair distribution. Rather, in adopting the Rawlsian approach, a fair distribution is determined in an ideal background condition. However, some may contend whether a principle of fairness for basic institutions is identical with

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<sup>26</sup> Sufficientarians may differ in what counts as a fulfilment of one's basic needs. See Amartya Sen (2001), Martha Nussbaum (2000) and Roger Crisp (2003).

that for interpersonal interactions (James, 2014: 292-295; 2016: 240). For instance, when a millionaire buys a bottle of water from a poor street vendor, the Rawlsian approach seems to suggest counterintuitively that the millionaire ought to give the poor seller a lot of money because the least advantageous ought to receive the greatest benefits. The Rawlsian approach's problem is that it does not offer a substantive criterion of fair distribution to deal with allocating the social surplus in interpersonal transactions where transactors experience unequal background conditions.

The fairness baselines reviewed above might or might not be plausible, and I offer no argument to favour any of them. Rather, I only point out that there are couples of ways to understand what a fairness baseline is and they may be applicable in some cases but are not suitable in others.<sup>27</sup> Hence, unfair exploitation refers to a situation where the exploiter's gain exceeds what she ought to receive, or the exploitee's gain is less than she ought to receive. When the allocation of social surplus is consistent with a fairness baseline, unfair exploitation ceases. This is important for us to understand the nature of exploitation.

In sum, I think that because Arneson and Wertheimer have different understandings of what constitutes an ideal market price, Wertheimer might agree with Arneson that market agents can do better than paying the ideal market price. Perhaps, their dispute will cease if Wertheimer terms the ideal market price as a 'non-exploitative price', rather than a 'fair price'. Having addressed Arneson's objection to Wertheimer's ideal market price and having presented how Wertheimer might respond to the objection, I now turn to Wood's critique of Wertheimer's account.

#### **2.4. Allen Wood's Critique of Wertheimer's Account of Exploitation**

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<sup>27</sup> For more discussions of a variety of fairness baselines. See David Miller (2017), Ferguson & Ostmann (2018), Benjamin Ferguson (2018), Vrousalis (2017) and Carl Mildenberger (2020).

When introducing Wood's criticism, it helps to introduce the distinction between *the transaction-specific view* (exploitation as taking unfair advantage of unfairness) and *the process-focused view* (exploitation as taking advantage of unfairness) to classify exploitation theorists. The transaction-specific view maintains that the unfairness in the terms of a transaction is necessary for exploitation; by contrast, the process-focused view insists that transactional unfairness is not necessary for exploitation and taking advantage of B's unfairness is sufficient for exploitation.

While theorists — such as Wood (1995, 2016), Sample (2003), Nicolas Vrousalis (2016), Steiner (1987, 2010) and Anne Phillips (2017) — endorse the process-focused view, theorists — such as Wertheimer (1996), Arneson (2013, 2016), Chris Meyers (2004, 2007), Mikhail Valdman (2009), Matt Zwolinski (2012, 2016), Robert Mayer (2007a), Jeremy Snyder (2008), and Risse and Wollner (2019) — endorse the transaction-specific view. As we have seen, although Arneson rejects Wertheimer's conception of fairness, he agrees that wrongful exploitation is a matter of unfairness. In this section, by introducing Wood's version of this critique, I illustrate how the process-focused view rebuts the transaction-specific view and indicate their real disagreement.

#### **2.4.1. Wood's Objection: Exploitation Involves no Distributive Unfairness**

Wood claims that exploitation occurs independently of whether transactions are fair (2016: 95-96). The unfairness in the terms of a transaction is unnecessary for exploitation. For instance, suppose that sweatshops in developing countries employ children. Suppose that the wages for those children provided by the sweatshop owners are higher than average and therefore not unfair relative to a fairness baseline. However, employing children nonetheless seems exploitative for many.

For Wood (2016: 100-101), even if, in a mutually beneficial and consensual transaction,

the exploitee gains a huge amount – indeed, more than the exploiter – and even if the transaction’s terms are fair, wrongful exploitation can still obtain. A transaction could be fair *and* exploitative. On the other hand, the unfairness is not sufficient for exploitation. For instance, one can pay double the cost of production for candy sold by a disabled adult without being (wrongly) exploited, even though the terms are unfair according to Wertheimer’s ideal market price. Hence, the unfairness in the terms of a transaction is neither necessary nor sufficient for exploitation.

#### 2.4.2. Wertheimer’s Response

In response, Wertheimer will agree that the unfairness of the terms of the transaction is not sufficient for exploitation. My paying double in price to a disabled seller for a bubble gum does not entail that wrongful exploitation occurs. Nonetheless, Wertheimer would deny that the unfairness is unnecessary as Wertheimer maintains, “No unfairness in the terms of the transaction, no exploitation” (1996: 208). Let us consider his case of the ‘greedy snowstorm rescuer’.

A fair-minded but not overly altruistic entrepreneur roams the highways in a snowstorm and offers to rescue stranded motorists for an eminently fair price. He takes advantage of the rescuees’ plight in order to supplement his income. True his rescuees typically feel that they have “no choice” but to accept his help at the proposed price. Still, he hardly exploits their plight in a pejorative sense. (Wertheimer, 1996: 208)

The key point of this case is that, for Wertheimer, fairness is sufficient for the absence of exploitation: when the terms of a transaction are fair, even if one takes advantage of another’s plight, no exploitation occurs. His conceptual distinction between “taking advantage of unfairness” and “taking unfair advantage of unfairness” is still insightful

(1996: 298). A cannot exploit B without taking unfair benefits from their transaction. If fairness is sufficient for the absence of exploitation, unfairness is necessary for wrongful exploitation.

The controversy between Wood and Wertheimer, however, remains unsolved and represent two major forms of exploitation. In my view, neither view provides a complete account of exploitation. I thus reject that the unfairness is necessary for exploitation and that taking advantage of B's disadvantage is *always* sufficient for exploitation. In what follows, I suggest one way to solve the controversy. My account of exploitation will integrate the two distinct accounts of exploitation.

## 2.5. Exploitation as Wrongful Gains: Two Understandings

Generally speaking, A exploits B if and only if *A takes unfair advantage of B's disadvantage* (Ferguson, 2018; Vrousalis, 2018: 2-3; Wertheimer, 1996), in which B voluntarily engages in a transaction in which with A.<sup>28</sup> To be exploitation, the exploiter must use the exploitee's disadvantage as a chance to gain benefits. Thus, mutually beneficial and consensual exploitation consists of two elementary constituents: (1) A benefits by (2) taking advantage of B (Vrousalis, 2018: 2). In (1), A gains benefits relative to the non-transaction baseline. Regarding (2), the minimum interpretation of 'taking advantage of' is that A "add[s] an option to his opportunity set that is better both for him and for me than the option preferred by him prior to the expansion" (Elster, 1982: 364).<sup>29</sup> However, theorists of exploitation differ primarily on the substance of (1) and (2), respectively. As such, theorists who endorse the process-focused view put great emphasis on how to interpret (2) and are

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<sup>28</sup> For the sake of argument, I shall leave (3): B voluntarily engages in a transaction with A, aside.

<sup>29</sup> I will discuss the conceptions of advantage-taking behaviour in Chapter 4. Now let's put it aside and focus on the quality of A's gains.

less concerned with (1). By contrast, theorists who endorse the transaction-specific view insist that the unfairness is the only way to understand the quality of A's gains and are less concerned with (2). Note that both views hold that (1) and (2) are jointly sufficient for mutually beneficial and consensual exploitation. In this section, I offer my answer to the controversy.

### 2.5.1. Exploitation is a Form of Wrongful Gain

Exploitation is a form of wrongful gain (Feinberg: 1990; Mayer: 2007a). Wrongful gain encompasses numerous wrongdoings, e.g., theft, robbery, and exploitation. This means that if the interaction between parties does not involve wrongful gain, no exploitation occurs. What distinguishes *mutually beneficial and consensual exploitation* from other wrongdoings, such as murder, theft, or wrongful coercion, is that both parties consent to, and benefit from, the transaction without involving coercion, harms, or manipulation. For instance, an outraged teenager can harm her boyfriend by stabbing him in the arm without gaining wrongfully from such behaviour. However, in exploitation, the exploiter must gain wrongfully from the transaction with the exploited. How to understand the quality of the exploiter's wrongful gain, then, is crucial for theorists of exploitation. This point becomes manifest when considering the paradigmatic case of sweatshops.

Sweatshop labour refers to a situation where labourers in factories receive extremely low wages and are under poor working conditions, such as strict discipline and restrictions on working circumstances.<sup>30</sup> Sweatshop labour is widely believed to be exploitative, but it would not be if sweatshop owners do not gain wrongfully from the sweatshop contract. In this case, wrongful gain has various explanations. It can be wrongful, either because the

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<sup>30</sup> See Benjamin Powell (2014) and Alessandra Mezzadri (2017).

wages that workers receive are below the minimum wage dictated by the local government, or because workers do not receive wages corresponding to their contribution (Marx, 1990: 283-306), or because the employers of sweatshops take advantage of the underdevelopment in that country, which enables them to pay lower wages than they could if all countries obtained equal development opportunities. People may have various explanations of what makes the exploiter gain wrongfully, but the point is that wrongful exploitation will not occur if the exploiter does not gain wrongfully. Hence, an account of exploitation must define *the quality of A's gains*, whether such a wrongful gain is called unfair or not, and whether the exploited receives higher remuneration than the exploiter.

Theorists may adopt different economic theories to explain how such wrongful gain takes place and how the benefits and losses are calculated. Then an account of exploitation is inadequate if it fails to focus on the absolute or relative gains and losses between exploiting and exploited parties. Failing to do so will result in a vague account of exploitation, such that some may use the terms 'benefits more' or 'excessive gain' or 'exorbitant price' to indicate that a transaction is exploitative. However, if we do not know what counts as excessive gain, we do not know why such a transaction can be regarded as exploitative. For instance, one can buy Vincent van Gogh's painting in an auction for, say, one billion dollars, without being exploited or exploiting others, however excessive or exorbitant this benefit would be to the seller. In other words, we need a more complete account of the moral valence of benefits and losses in order to form a plausible account of wrongful exploitation.

### **2.5.2. The Unfairness is not Necessary for Exploitation**

Now I contend that the transaction-specific view is incorrect in that the unfairness in the terms of a transaction is not necessary for exploitation. Given that exploitation is a form



of wrongful gain, since the exploiter's gaining unfairly is not necessary for exploitation, there must be another way to understand what it means for A to gain wrongfully. Let me first explain why the unfairness is not necessary for exploitation. I will reach a conclusion by illustrating that exploitation may occur even if the terms of a transaction are fair relative to Wertheimer's hypothetical market price, or some other fairness baselines.

Let us consider cases such as organ sales, commercial surrogacy, and child labour. These cases are widely considered as exploitation and are different from other exploitative cases such as sweatshop exploitation and price gouging. What differentiates organ sales, commercial surrogacy, and child labour from sweatshop exploitation and price gouging, is that in the latter cases if the terms of a transaction were fair according to a fairness baseline, no exploitation occurs. However, it might be questioned whether or not in the former cases exploitation ceases when the kidney seller, the surrogate mother and the labouring child receive fair remuneration from the transaction. What the former cases share in common is that even if we remove the consideration of unfairness from them — whatever the benchmark of that specific commodity would be — such transactions, I believe, would still be widely considered as exploitation.<sup>31</sup> If so, what makes the former cases inherently exploitative is not the unfair terms of interactions but the fact that they involve gaining wrongfully in some other way.

Take kidney sales, for example, and presume that kidney sales are exploitative. On Wertheimer's view, the exploitative character of kidney sales rests on the kidney's unfair price. He may suggest that we imagine the price of kidney sales in a hypothetical competitive market, where there are sufficient providers and buyers of kidneys. Once the kidney's price reflects its cost, no one can complain that the exchange is exploitative.

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<sup>31</sup> Suppose that the sellers in these cases receive great benefits from their transaction with a billionaire. In this case, I do not think that exploitation occurs. However, this rarely happens in reality. Also, even in severely exploitative cases, a benchmark of wrongful gain is still required. This is why when the sellers in these cases receive huge benefits, I would not consider them as exploitation.

However, this verdict seems mistaken and counterintuitive. It ignores the fact that for some, to wrongly commodify a part of a person is simply to treat others as inferior or with a lack of respect (Anderson, 1990; Satz, 2010). As Panitch (2017: 121) suggests, the value of at least three things could be regarded as being corrupted when bought or sold: there are “the value of the item itself”, “the value of the vendor”, and “the value of important social norms and personal relations”. For instance, human bodies are generally considered something that should not be bought or sold for corruption-based reasons. When one’s organ is sold and bought in the market, it will bring about enduring harms to one’s body and social status. Thus, the commodification theory partly explains our intuition that, even when the terms of some transaction are fair relative to a fairness baseline, somehow, we may still regard them as exploitative, especially in paradigmatic cases, such as organ trading, prostitution, or child labour. We will think that the exploiter’s gains from such situations would be considered exploitative in ways other than unfair gains.

Hence, if there are some exploitative cases in which the exploiter gains wrongfully in ways other than unfair gains, the unfairness in the terms of a transaction is not necessary for exploitation, and A’s having gained unfairly is only one way to understand the quality of A’s gains. There must be other ways to understand how the exploiter gains wrongfully. Thus, Wertheimer’s account of exploitation is incomplete. Although Wertheimer’s account works properly in cases where the transaction does not involve ‘blocked exchanges’, he fails to notice that we ought not buy or sell certain goods, because such transactions disrespect people. Consequently, if the unfairness is not necessary for exploitation, the transaction-specific view is incorrect.

### **2.5.3. Disrespectful Gains**

Having contended that the unfairness is not necessary for exploitation and there is another

way to understand the quality of the exploiter's wrongful gain, I shall briefly introduce it now and offer a detailed explanation in Chapter 3. One might wonder since for the transaction-specific view the quality of A's wrongful gain is determined by unfair gain: what is the quality of A's wrongful gain in the process-focused view? Although theorists of the process-focused view rarely answer this question, in my view, it belongs to disrespectful gain. As Mayer indicated, exploitation is fundamentally a process in which an exploiter extracts *illegitimate* benefits from the exploited group (2007a: 139).

If unfair gain is one way to understand the quality of the exploiter's gains, what is the other way to understand A's gaining wrongfully? First, as I have indicated, there are many ways to interpret what counts as a fairness baseline. All fairness baselines share one thing in common: once the distribution of social surplus and burdens is consistent with a fairness baseline, A is morally entitled to some part of the profits gained from the transaction with B. In contrast, the exploiter can gain wrongfully in ways other than unfairness when A gains from a disrespectful transaction in which the exploitee is treated as a mere means, and, therefore, the further implication is that all of A's gains are morally unjustified. Call this *disrespectful gain*. Cases, such as organ sales, commercial surrogacy, and child labour, are possible candidates that involve A's gaining disrespectfully, rather than unfairly.

Unfair gain and disrespectful gain represent two distinct ways to understand how the exploiter gains wrongfully from the exploitative transaction with the exploitee. Moreover, what differentiates unfair gain from disrespectful gain is whether or not the exploiter is morally entitled to some part of benefits, obtained from the transaction with the exploited. If yes, and A exploits B, what matters in unfair exploitation is not that A is not morally entitled to claim part of the profit from the transaction with B, but that what A gains is above a benchmark of fair distribution. In contrast, if A is not morally entitled to any part of her profits gained from the transaction with B, then what matters in disrespectful

exploitation is not that A's gains exceed a standard of fair share, but that all of A's gains are morally unjustified. This is the further difference between unfair gain and disrespectful gain. In Chapter 3, I will explain fully what disrespectful exploitation is and the meaning of disrespectful gain. For now, we only need to know that there are two distinct ways to perceive the exploiter's wrongful gain, and, thus, the transaction-specific view fails.

#### 2.5.4. The Relationship Between Unfair Gain and Disrespectful Gain

I have contrasted unfair gain and disrespectful gain. Nonetheless, note that although unfair gain and disrespectful gain are conceptually distinct, they may overlap in some cases. Consider organ trading, in which the exploiter may gain unfairly *and* disrespectfully. Let me assume that organ selling is exploitative and disrespectful. On the one hand, some think that since organ trading fails to respect the organ seller, the exploiter gains disrespectfully from the transaction and, therefore, she is not morally entitled to any profits from the transactions. On the other hand, the organ seller may be exploited because the price of her organ is unfair relative to Wertheimer's hypothetical market price. Organ trading, then, involves unfair and disrespectful exploitation at the same time. When the exploitee suffers unfair and disrespectful exploitation simultaneously, in my view, this is a case of *severe exploitation*. In showing this, I treat the concept of exploitation as a continuum notion (Phillips, 2017: 105), where its severity increases as the unfairness to B increases.<sup>32</sup>

To sum up, one of the necessary conditions of my account of exploitation is as follows:

**(a) Two Forms of Wrongful Gain:** A must gain benefits from her interaction with B

**Unfair Gains:** A gains unfairly relative to a norm of fair distribution

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<sup>32</sup> The concept of exploitation can also be regarded as an absolute concept. As Goodin argues, "people are either exploited or they are not". See Robert Goodin (1987: 181).

***Disrespectful Gains:*** A gains from a disrespectful transaction with B, one that violates the Merely Means Principle.<sup>33</sup>

In (a), unfair gain and disrespectful gain represent two different ways to understand the quality of A's gains. Either unfair gain or disrespectful gain is individually sufficient for exploitation when equipped with the Relational condition.<sup>34</sup> However, some questions remain unspecified. Chapter 3 will explain when and why a transaction turns into disrespectful exploitation by critically engaging with Sample's account of exploitation. In Chapter 4 I will present another necessary condition of my account: (b) *the Relational condition*: A takes advantage of B's weaker agency, compared to A's agency; and (a) and (b) jointly constitute my account of exploitation.<sup>35</sup>

## 2.6. Conclusion

Let us return to the controversy between the transaction-specific view (exploitation as taking unfair advantage of unfairness) and the process-focused view (exploitation as taking advantage of unfairness). I have rejected the transaction-specific view because the unfairness in the terms of a transaction is not necessary for exploitation. However, the process-focused view fails to define the quality of A's gains against unfair gains. In my view, the quality of A's gains in the process-focused view belongs to disrespectful gain, where A gains benefits from the disrespectful transaction with B. If the process-focused view is correct, this denies that the unfairness is necessary for exploitation.

Nevertheless, this does not mean that we should embrace the process-focused view unconditionally. Even if the unfairness is not necessary for exploitation, it remains an

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<sup>33</sup> I will explain the Merely Means Principle in Chapter 3.

<sup>34</sup> I will explain the Relational condition in Chapter 4.

<sup>35</sup> Concerning volition exploitation, (c), B voluntarily engages in a transaction in which A (or someone, C, who is accountable to A), is necessary. See section 4.6.

important way to perceive the quality of A's gain. In Chapter 3, I will argue that taking advantage of B's disadvantage is sufficient for exploitation *only if* removing the unfairness in a transaction would not cease our worry of exploitation in the exploiter's advantage-taking behaviour. I will also scrutinise and criticise Sample's process-focused account of exploitation and explain why and when taking advantage of B's disadvantage is sufficient for exploitation.

### 3. Exploitation and Disrespectfulness

Having argued that there are two ways to perceive the exploiter's wrongful gain in Chapter 2, the core question in Chapter 3 is to explain what *disrespectful exploitation* is and how it is different from unfair exploitation by examining Ruth Sample's account of exploitation. I do so because Sample is the most prominent theorist of disrespectful exploitation. Disrespectful exploitation is distinguished from unfair exploitation where the exploiter gains unfairly relative to a fairness baseline. In Chapter 3, I explicate *disrespectful exploitation*, which affirms that A exploits B if A takes advantage of B's inferiority to gain benefits in a way that violates *the Merely Means Principle*. However, Sample's account is flawed because it is vulnerable to what I shall term *the fairness test*. This holds that her account conflates unfair exploitation and disrespectful exploitation. Instead, I shall argue that her account is sufficient for exploitation *only if* the removal of the unfairness would not resolve our concerns about A's gains. If my argument succeeds, disrespectful exploitation and unfair exploitation are two distinct accounts of exploitation. Consequently, Chapter 2 and 3 jointly offer one of the conditions of my account of exploitation.

On the other hand, based on the distinction between unfair gain and disrespectful gain, I offer two conceptual connections between exploitation and anti-commodification. *The external connection*, as I shall call it, states that we ought to object to commodifying certain things because doing so may increase the possibility of the market agents (sellers and buyers) being exploited. By contrast, *the internal connection* states that we ought to object to commodifying certain things because to gain benefits by commodifying a person (or an attribute of that person) in a way that violates the Merely Means Principle concomitantly constitutes exploitation. The two connections offer two different exploitation-based reasons to object to commodifying certain items.

The structure of Chapter 3 is as follows. In section 3.1. I introduce Sample's accounts

of exploitation: exploitation as degradation. Sample offers three interpretations of exploitation as degradation, namely, (D1) taking advantage of B's vulnerability, (D2) taking advantage of a past injustice done to B, and (D3) commodifying a person as a fungible object of market exchange. Her accounts explain why taking advantage of B's disadvantage constitutes exploitation without involving the issue of unfairness. Section 3.2. criticises (D1) and (D2), and I argue that they are overinclusive in that they may include cases of unfair exploitation. Therefore, I contend, for her accounts to be sufficient for exploitation, it has to remain exploitative even if the terms of a transaction are fair. In section 3.3., I propose two conceptual connections between exploitation and anti-commodification: external and internal connections. Based on the two connections, in section 3.4., I turn to (D3) and argue that (D3) is not an exploitation claim and revise (D3) according to the internal and external connections. Section 3.5. considers and replies to two objections to my distinction between unfair gain and disrespectful gain. Section 3.6. is the conclusion.

### 3.1. Exploitation as Degradation

"[E]xploitation", Sample argues, "involves interacting with another being for the sake of advantage in a way that degrades or fails to respect the inherent value in that being" (2003: 57). Sample views exploitation as degradation: failing to respect a human being's or thing's intrinsic value *constitutes* exploitation. Exploitation then takes place "when the value of persons is not appropriately respected" (Sample, 2003: 83). In this understanding, Sample assumes that every human being has intrinsic value, and such value is worthy of our respect. Moreover, in her view, *degradation* is "treating someone or something as having less value than that person or thing actually has" (2003: 4). Thus, exploitation is a disrespectful behaviour that degrades another being's intrinsic value, which we have an obligation to respect and honour. This is to say that *A exploits B when A degrades B*. So, for Sample, the



term ‘exploitation’, ‘degradation’, and ‘disrespect’ are intertwined. However, what does it mean to disrespect a person?

“[R]espect, and in particular respect for persons, is the core requirement underpinning our judgments of exploitation” (Sample, 2003: 62). Sample adopts Immanuel Kant’s view — *we ought to treat people as an end but not merely as a means* — to define what constitutes disrespectful behaviour. A disrespects B when A treats B as a means only. What counts as treating another as a means only? For Sample, A treats B merely as a means when A is “refusing to acknowledge the value of our interactor by refusing to take her genuine interests seriously” (2003: 70). Exploitative interactions occur when one fails to take another’s genuine interests into consideration. Hence, A exploits B if and only if A fails to take B’s genuine interests into account in their interaction. This is the core idea underpinning Sample’s account of exploitation.

On Sample’s view, people may fail to respect others in three ways. First, one might fail to respect others simply because she believes her interactors are “not deserving of respect” (Sample, 2003: 58). For instance, a lord would show no respect to his serfs since he believes serfs are inferior beings, which justifies treating serfs as less valuable. The lord’s misbelief is sufficient for disrespect. Second, people might fail to respect others because they misunderstand “what respect requires” (ibid). This often happens. People in different regions have unique ways to treat people with respect, and people might feel disrespected when they are not treated in a way that they perceive as respectful. This concerns how to express respect with proper forms. Third, people might fail to respect others because they fail to fulfil a requirement of respect, even if they know what respect requires in general (2003: 59). For instance, an employer knows that respect requires her to pay her employees enough wages so that their basic needs can be satisfied; however, she might misunderstand the cost of living in a metropolis and disrespect her employees unintentionally. These are possibilities that one can disrespect others unintentionally, and for Sample, these are

“unintentional exploitation” (2003: 58). People might contest the substance of respectful behaviour. However, to operationalise ‘exploitation as degradation’, Sample needs to specify the substance of disrespectful behaviour.

In Sample’s view, although people can disrespect others in various ways, she specifies three distinct forms of disrespectful behaviour, and believes that various forms of degrading behaviour would fall into these three categories. A fails to acknowledge B’s inherent value when:

(D1) A disrespects (exploits) B “by neglecting what is necessary for that person’s well-being or flourishing.”<sup>36</sup>

(D2) A disrespects (exploits) B “by taking advantage of an injustice done to him.”

(D3) A disrespects (exploits) B “by commodifying, or treating [a person] as a fungible object of market exchange” (Sample, 2003: 57).

Note that (D1) to (D3) are at the same time forms of exploitation. Also, as noted in Chapter 2, although *the process-focused view* that Sample endorses is less concerned with the wrongness of A’s gain, (D1) to (D3) are three main ways to obtain *disrespectful gains* by taking advantage of B’s feature. Now let me explain (D1) to (D3).

### 3.1.1. (D1) Taking Advantage of Another’s Vulnerability

The notion of *vulnerability* connects to (D1) and Sample’s understanding of exploitation in

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<sup>36</sup> Later on, I will redefine (D1) as A exploits B when A takes unfair advantage of B’s vulnerability. This is because Sample considers ‘taking unfair advantage of B’s vulnerability’ as a significant way of ‘neglecting what is necessary for B’s well-being or flourishing’. Much of her discussion focuses on the notion of ‘vulnerability’. This is why (D1) should be redefined as ‘A exploits B when A takes unfair advantage of B’s vulnerability’. However, we should notice that ‘taking unfair advantage of B’s vulnerability’ is merely an instance of ‘neglecting what is necessary for B’s well-being or flourishing’. They are different behaviours.

a significant way. For Sample, “to take unfair advantage of” another’s vulnerability is “to interact with another so as to disregard what is necessary for human well-being” (2003: 74). Although people can ignore what is necessary for another’s well-being or flourishing in a number of ways, Sample centres on the behaviour of using another’s vulnerability to gain benefits. Therefore, I redefine (D1) as follows:

(D1) A exploits B if A takes advantage of B’s vulnerability.<sup>37</sup>

In general, whenever Sample uses the notion ‘vulnerability’, she refers to B’s deficiency which leads B to accept an inferior contract. Sample maintains that whenever B is exploited, B’s vulnerability must be made use of (2003: 83). In other words, to take advantage of B’s vulnerability is sufficient for exploitation. However, what does the notion ‘vulnerability’ mean in Sample’s view? In Sample’s view, the notion ‘vulnerability’ has three meaning that involves basic needs, capabilities, or bargaining inferiority. Let us start with basic needs and capabilities.

### 3.1.1.1. Vulnerability as Basic Needs and Capabilities

According to Sample, “[t]he principal form of vulnerability in such cases is need” (2003, 74). A need can be for physical goods, mental health, or well-being conditions more generally. What counts as basic needs can vary from one culture to another. In this understanding, vulnerability is determined by the requirements of human flourishing.

When determining what is necessary for human flourishing, *welfare*, *resources*, and

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<sup>37</sup> Sample uses ‘taking unfair advantage of’ but not ‘taking advantage of’ to refer to (D1) (2003: 74). However, for her, the phrase ‘taking unfair advantage of’ seems no different from the phrase ‘taking advantage of’. She uses the two phrases in the same manner. So, I use the phrase ‘taking advantage of’ in order to distinguish between ‘taking unfair advantage of’ and ‘taking advantage of’.

*capability* are potential candidates. Welfarism focuses on the satisfaction of personal preferences; resourcism suggests that “primary goods” are required to be “a fully cooperating member of society” (Rawls: 2001: 57-58).<sup>38</sup> However, Sample follows the capability approach, proposed by Amartya Sen (2001) and Martha Nussbaum (2000), in defining her criterion of exploitation. The capability approach claims that “basic powers of choice that make a moral claim for opportunities to be realized and to flourish” (Nussbaum, 2000: 298; cf. Sen, 2001: 40-41). It focuses on whether or not citizens can turn resources into capabilities. Even if citizens can receive an equal amount of resources, their resources do not guarantee that they can all achieve a basic level of functioning. For Sample, with regard to human flourishing, the capability approach is better than welfarism and resourcism (2003: 76-80).

Vulnerability, thus, is understood as one’s insufficiency of capabilities. Exploitative interactions occur when A takes unfair advantage of B’s vulnerability, that is, B’s insufficiency of capabilities (Sample, 2003: 80-81). When people’s capabilities are below a threshold, they will become vulnerable to others whose capabilities are satisfied. In so understanding, vulnerability is an absolute, rather than comparative, notion in regard to exploitation. Thus, deficiency may generate exploitation. For example, if one is vulnerable in the sense that she desperately needs food, others could take advantage of her vulnerability to gain benefits. Besides, since to take advantage of B’s vulnerability is to neglect what is necessary for B’s well-being and flourishing, the advantage-taking behaviour is disrespectful and constitutes exploitation. Therefore, (D1) is sufficient for exploitation.

On the other hand, Sample reminds us that it is the disrespectful behaviour — neglecting what is necessary for B’s well-being and flourishing — that accounts for our fundamental understanding of exploitation. Sample (2003, 81) argues that an interaction is

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<sup>38</sup> See Rawls (2001: 58-59) for his five kinds of primary goods.

exploitative when A fails to take B's capabilities into consideration, where the social surplus from the interaction is pertinent to these needs. For instance, suppose Ann attempts to hire a janitor, Bob, to keep her office clean. As an unskilled worker, Bob has looked for a job for a while and has two children to raise. However, Ann is only willing to pay Bob wages that fail to meet Bob's basic needs, not to mention the fulfilment of Bob's capabilities. When Bob asks for a better salary, Ann refuses. In this case, Ann disrespects Bob in the sense that Ann fails to take Bob's basic needs into account. When Ann determines the wage to be paid to Bob, Bob's basic needs are not a concern for Ann. Ann, then, disregards Bob.

Note that for Sample, even if Ann is capable of offering a fair wage for Bob, she does not have to *ensure* Bob's capabilities in individual transactions (Sample, 2003: 81). We do not have a duty to supply our interactors with whatever they need in terms of flourishing—which seems too demanding and almost impossible to do (ibid). Instead, what makes Ann's behaviour exploitation is her failure to take Bob's basic needs and capabilities into consideration. In brief, it is Ann's attitude, not whether Ann can fulfil Bob's well-being in a single transaction, that matters (Ferguson & Steiner, 2018: 537).

### 3.1.1.2. Vulnerability as Bargaining Inferiority

Apart from vulnerability as the insufficiency of capabilities, vulnerability, in Sample's view, can be viewed as one's inferior bargaining position. With respect to bargaining inferiority, Sample agrees with Robert Goodin (1987: 184-187), who argues that exploitation is playing for advantage when the bargaining power between parties is asymmetric. Goodin perceives exploitation as taking advantage of an unusual situation. The four main types of unusual situations proposed by Goodin all violate a moral norm: that is, to protect the vulnerable, especially those who are particularly vulnerable to us (ibid). We become vulnerable to an

interactor when our interactor possesses more bargaining power than us. Our inferior bargaining position renders us vulnerable—whether or not this inferiority results from our bargaining weakness or our interactor’s superior bargaining capacity or potential, where this includes the power to agenda-set. In short, people will become vulnerable when they possess less bargaining power than their interactors.

Therefore, even if B’s basic needs and capabilities are met, B can be exploited because of B’s bargaining inferiority (Sample, 2003: 82-83). Besides, Sample holds that bargaining inferiority can sometimes be caused by a past injustice (Sample, 2003: 82-83). This leads to (D2). Now we only need to know that the notion ‘vulnerability’ is construed by Sample as basic needs, capabilities, or bargaining inferiority, respectively. To take advantage of such vulnerabilities is sufficient for exploitation.

### **3.1.2. (D2) Taking Advantage of an Injustice**

To take advantage of an injustice that one suffers, for Sample, is another form of exploitation as degradation. This is because “[t]aking advantage of injustice fails to respect the value of other beings who deserve to be treated justly and hence fits the model of Exploitation as Degradation” (Sample, 2003: 82). Under such conditions, A exploits B because A took advantage of an injustice done to B. (D1) and (D2) are connected when A takes advantage of B’s bargaining inferiority, compromised by a past injustice, to gain benefits (*ibid.*). Hence, (D2) represents another form of exploitation as degradation.

### **3.1.3. (D3) Failure to Respect People by Commodifying Inappropriately**

The final form of exploitation as degradation is to commodify inappropriately a part of a person’s being that ought not to be sold and bought in the market (Sample, 2003: 57, 83).

Sample acknowledges that some attributes of a person are sold and bought in the market without raising any moral concerns, such as talents, capacities, or human labour; but still, human beings and some features of a person should not be commodified (2003: 58). To commodify a person or a part of that person would diminish the concept of personhood, which violates the Kantian norm that we should treat people as an end but not merely as a means (Radin, 1996: 84). “[T]he Kantian person”, Radin argues, “cannot be conceived of as a fungible exchangeable object” (ibid). In other words, to commodify a person, or some attributes of that person fails to respect that person in the Kantian sense. Thus, according to Sample’s exploitation as degradation, treating a person as a commodity is disrespectful and, thus, exploitative.<sup>39</sup>

#### **3.1.4. The Connection Between (D1), (D2) and (D3)**

(D1), (D2), (D3) are mutually independent statements. So, in some cases, even if (D1) and (D2) are unmet, the satisfying of (D3) is sufficient to count as exploitation. Let me assume commercial surrogacy is a form of degradation because it would treat reproductive labour as a commodity (cf. Anderson, 1990; Satz, 2010: ch.5).<sup>40</sup> Supposing that a surrogate mother has her basic needs considered by her employer, and supposing she encounters no serious injustice that compromises her bargaining position; still, exploitation may occur in Sample’s sense when and because her reproductive capacity is inappropriately commodified and, therefore, she is exploited. In this case, although (D1) and (D2) are unmet, if (D3) is met, then exploitation occurs. On the other hand, (D1), (D2), and (D3) can overlap with each other. Prostitution, for example, can satisfy (D1), (D2), and (D3) at

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<sup>39</sup> This might be odd, and I shall explain why, later on.

<sup>40</sup> I do not mean to take a standard on commercial surrogacy but only to use it as a case to illustrate the connection between (D1), (D2) and (D3).

the same time. A prostitute might work in a morally wrong sex market, find her basic needs disregarded by her pimp, and she might suffer a past injustice — a civil war that forces her to escape from her country. In this case, (D1), (D2), and (D3) are met simultaneously.

### 3.1.5. Two Distinct Features of Sample's Account

Now I specify two distinct features of Sample's account of exploitation. One is that Sample employs the process-focused view; exploitation as taking advantage of a feature of B. Another is that while (D2) is historical, (D1) and (D3) are ahistorical in the sense that the cause of B's insufficiency makes no difference to identify exploitation.

#### 3.1.5.1. Sample's Process-Focused Account of Exploitation

Sample's account represents the process-focused view. To identify exploitation, she suggests that we should focus on the disrespectful behaviour that A makes use of B's vulnerability for advantage, to decide whether their interaction is exploitative or non-exploitative (Ferguson & Steiner, 2018: 534-535). As we have seen, for Sample, the three major forms of exploitation as degradation are all *individually* sufficient for the occurrence of exploitation. There is no need to refer to any substantive benchmarks of fair distribution of social surplus between parties to assess whether or not exploitation occurs. This means that, for Sample, taking advantage of another's vulnerability, taking advantage of past injustice, and commodifying an aspect of the person's well-being that should not be commodified, are themselves independent and sufficient sources of judging whether or not an interaction is exploitative. In this understanding, exploitation becomes a matter of how A interacts with B *in a disrespectful manner*.

Yet, Sample agrees that a transaction can be mutually beneficial and exploitative. Even



if both parties gain benefits relative to the no-transaction baseline, their transaction can still be exploitative. While the transaction-specific view contends that it is the unfair terms of a transaction that make the transaction exploitative, Sample just leaves the concern of the unfair terms of a transaction aside and puts all her emphasis on A's disrespectful manner toward B. In her book *Exploitation: What it is and Why it's Wrong*, only a few paragraphs are spent on the issue of the distribution of benefits. Sometimes she seems to assert that exploitation involves gaining benefits disproportionately, sometimes that profiting from an injustice that B suffers suffices for exploitation (2003: 13, 83). The concern of unfairness in a transaction, it seems, plays no role in her account, and this leaves her account vulnerable to the fairness test. That is, some might contend that (D1) to (D3) are not exploitative if the terms of a transaction are fair relative to a fairness baseline. I shall explore the point later.

However, even if Sample's account is vulnerable to the fairness test, which I will argue in the next section, this does not suggest that the process-focused view is false. Instead, when revised, the process-focused view is sufficient for exploitation. What distinguishes the process-focused view from the transaction-specific view is that the process-focused view involves the concern of disrespectfulness, that is, a person is treated as merely a means (the Merely Means Principle). For instance, some might insist that a person's inappropriate commodification, such as organ sales and child labour, involves treating that person or an attribute of that person as merely a means. On Sample's view, since such transactions are disrespectful, they constitute exploitation in a way different from unfair exploitation. In other words, it is the disrespectfulness, rather than the unfairness, that makes these transactions exploitative. The disrespectfulness that market exchanges involve turns the focus from unfairness to concerns regarding whether we ought to benefit from demeaning market exchange. In the following sections, I revise the process-focused view by criticising Sample's account and argue that the revised version of the process-focused view is

sufficient for exploitation.

### 3.1.5.2. Sample's Historical and Ahistorical Account of Exploitation

Sample's account of exploitation is historical and ahistorical simultaneously. (D1) and (D3) are *ahistorical*, which means she disregards the causes that lead to B's insufficiency (Ferguson & Steiner, 2018: 536). For Sample, the causes of B's insufficiency are irrelevant to assessing whether or not a transaction is exploitative. In (D1) and (D3), we do not have to know the exact causes of B's insufficiency to decide whether or not a transaction is exploitative. To make a judgment on exploitation, Sample only offers the following three criteria—taking advantage of another's vulnerability, taking advantage of injustice done to another, and commodifying an aspect of the person inappropriately. The ahistorical accounts of exploitation, proposed by Sample (2003) and Goodin (1987), hold that whether B's insufficiency is self-caused or due to other factors beyond B's control, is of no concern (Ferguson & Steiner, 2018: 535).

(D2) is a historical account of exploitation, which means the cause of B's disadvantage *matters* in determining whether exploitation occurs. Contra the ahistorical account of exploitation, for *historical* accounts of exploitation, what causes B's disadvantage is crucial to the charge of exploitation. In Ferguson and Steiner's classification, the causes of B's inferiority can be partitioned into three forms: natural, other-caused, and self-caused (2018: 535). That is, B's insufficiency may be caused by natural events, or others, or himself. To elaborate, if B's disadvantage is a natural disadvantage or other-caused disadvantage, A should constrain her advantage when interacting with B. On the contrary, if B's disadvantage is *self-caused*, A does not need to constrain her advantage when interacting with B. Thus, Ferguson and Steiner (2018: 543) deny the claim that A exploits B when A fails to constrain her advantage when B's insufficiency is *self-caused*. In brief, for historical

accounts of exploitation, exploitation stems from B's unjust circumstances.

The distinction between historical and ahistorical accounts of exploitation is crucial to our understanding of the injustice of exploitation, which I will explore in Chapter 6. For now, my purpose is to note the features of Sample's account of exploitation. After presenting Sample's account, I criticise her accounts by illustrating that her accounts in particular (and the unrevised version of the process-focused view in general) are vulnerable to the fairness test. This means the unrevised version of the process-focused view is overinclusive that it will include non-exploitative cases. I shall suggest that the process-focused view, in general, is sufficient for exploitation *only if* a fair distribution between parties would not satisfy our moral concerns. Having explicated Sample's accounts of exploitation, I criticise them.

### 3.2. A Critique of Sample's Accounts: (D1) and (D2)

By criticising (D1) and (D2), I indicate that accusations of exploitation, raised by the process-focused view, sometimes cease when the terms of the transaction are fair relative to a fairness baseline. This suggests that for the process-focused view to be sufficient for exploitation, it has to pass what I call *the fairness test*. That is to say that the process-focused view is sufficient for exploitation *only if* a fair distribution between parties would not cease our worry of exploitation in disrespectful advantage-taking behaviour. In other words, for the process-focused view to be true, exploitation must remain even if the terms of the disrespectful transaction are fair.

#### 3.2.1. A Critique of (D1)

(D1) claims that A exploits B if A takes advantage of B's vulnerability (the insufficiency

of one's basic needs or capabilities for human flourishing). To take advantage of such vulnerabilities constitutes exploitation mainly because, for Sample, A fails to take B's capabilities for flourishing into account and, therefore, disrespects B. However, (D1) is not sufficient for exploitation because it is vulnerable to the fairness test. It is possible that, although A takes advantage of B's vulnerability, no exploitation occurs so long as the terms of their transaction are fair relative to a fairness baseline. This means that (D1) includes (D1'): *A exploits B when A takes unfair advantage of B's vulnerability relative to a fairness baseline.* If so, (D1) will include exploitative cases in which its exploitation stems from unfair terms, rather than disrespectfulness.

Consider a case in which Anna is the only doctor in a village and, it seems, Anna takes advantage of her patients' vulnerability to gain benefits. The doctor-patient relationship fits (D1) and, therefore, is exploitation on Sample's view. However, this is implausible because in the doctor-patient relationship, when the terms of their transaction are fair, even if Anna takes advantage of her patients' vulnerability to gain benefits, it is not exploitation. Hence, (D1) is too broad because (D1) includes the possibility of (D1')—a form of the transaction-specific view.

### 3.2.2. A Critique of (D2)

(D2) claims that A disrespects (exploits) B “by taking advantage of an injustice done to him” (Sample, 2003: 57). Such behaviour is so disrespectful that it constitutes exploitation. However, (D2) is vulnerable to the fairness test.

Consider the following example. An attorney, Ann, defends her client, Bob, who suffers a past injustice. Suppose that Bob is the survivor of a terrible assault. Although Bob's situation is so desperate that any attorney with a sense of justice would like to help him without charging any fees, Ann, however, runs her own business and cannot defend

Bob for free. So, Ann decides to charge only the minimum remuneration from Bob that covers her basic expenses. In this case, Ann is surely taking advantage of a past injustice that Bob suffers to gain benefits.

Nonetheless, few would consider that Ann exploits Bob in a pejorative sense, especially when Ann only takes the basic expenses of defending Bob in the court without gaining extra benefits from Bob. In other words, even if Ann takes advantage of a past injustice done to Bob, no one can complain that Ann exploits Bob since the terms of their transaction are fair. Conversely, if Ann takes advantage of Bob's desperate situation to gain unfairly, she exploits Bob.

And from the case, we can derive a transaction-specific version of (D2).

(D2') A exploits B when A takes advantage of a past injustice that B suffers to gain *unfairly* relative to a fairness baseline.

Nonetheless, the case is exploitative for Sample. Even if Ann only takes the minimum remuneration from Bob, Ann is still guilty of exploitation because taking advantage of a past injustice that one suffers, constitutes exploitation. This conclusion seems implausible. If my critique is correct, then (D2) is not sufficient for exploitation because it fails to pass the fairness test in the sense that (D2) includes (D2').

### 3.2.3. Revising the Process-Focused View

We can conclude from my critiques that (D1) and (D2) (and the process-focused view in general) are overinclusive. Sample's formulation of the process-focused view fails to give a plausible account of disrespectful exploitation; that is, exploitation in which an exploiter gains as a result of disrespectful treatment rather than unfairness. Hence, I suggest that

*(D1) and (D2) are sufficient for exploitation only if the removal of unfairness would not terminate the worry of exploitation.* When so revised, the process-focused view is separated from the transaction-specific view. The process-focused view constitutes exploitation only if the exploiter gains wrongfully from the disrespectful transaction with the exploitee in ways other than unfairness. When the concern of unfairness has been removed from Sample's account (and the process-focused view in general), the process-focused view can, in itself, constitute exploitation. The exploiter takes advantage of the exploitee's vulnerability to gain benefits from their disrespectful transaction, in which all of the exploiter's benefits are morally unjustified.

Before proceeding to my discussion of (D3)—A exploits B when A commodifies or treats B as a fungible object of market exchange—I offer two conceptual connections between exploitation and anti-commodification according to my distinction between unfair gain and disrespectful gain, namely, the external and the internal connections. Based on the distinction, I return to (D3) and argue that (D3) conflates two forms of exploitation via commodification.

### **3.3. Exploitation and Anti-Commodification: External and Internal Connections**

In this section, I first clarify wrongful exchange, exploitation, and commodification. Although commodification is akin to exploitation, their relationship remains unclear. I then introduce two ways of understanding the relationship between exploitation and commodification according to my distinction between unfair gain and disrespectful gain. The first version affirms what we might term the 'external' connection: this holds that we ought not to commodify a person or a part of that person, because *doing so will increase the possibility of being exploited unfairly*. The second version affirms what we might term the

‘internal’ connection. The internal connection holds that we ought not to commodify a person, or a part of that person because *doing so constitutes exploitation*. Once their relationships have been clarified, it will become clear that (D3) conflates two forms of exploitation via commodification.

### 3.3.1. Wrongful Exchange: Exploitation and Commodification

Let us start with wrongful exchanges. Exchanges can be wrongful for various reasons. One reason is that the exchange is exploitative. Note, however, that this is not the only way that an exchange can be wrongful. For instance, when an exchange is harmful or coercive, such an exchange is often considered wrongful, and we may have reason to ban such exchanges. Wrongful exchanges may occur outside the market. For instance, a parent can promise to buy a video game for their child in exchange for better achievement in school. For some experts of education, to motivate a child’s performance by giving the child material enjoyment would be harmful to the child’s long-term achievement. If so, we should discourage that kind of domestic exchange not because it is exploitative, but because it is harmful. Exploitative exchanges, thus, are a particular kind of wrongful exchange.

While wrongful exchanges and exploitation may take place in various domains, anti-commodification claims focus on market exchanges and attempt to confine the scope of the market. Unlike Karl Marx, who endeavours to ultimately reject the market’s whole existence, most theorists only aim to confine the commodification of certain contested goods. They provide different reasons to deny the commodification of contested goods.

One anti-commodification claim is that when some goods are sold and bought in the market, such commercial behaviours are against the essence of these goods (Andre, 1992: 32-35). Friendship, love, or honour are paradigmatic instances of this category. Take honour, for example. When the Nobel Prize, one of the highest honours of academia, is

sold in the market, it loses its meaning as one of the highest awards for academic achievement immediately and can no longer be viewed as a prize. The nature of honour is that it ought to be bestowed by others using a standard of desert. However, when the prize is commodified and can be bought in the market, whoever wants the prize can access to it. The essence of the prize has been corrupted.

Another anti-commodification claim is that when some goods are exchanged for money in the market, workers are *alienated*, which they ought not to be (Andre, 1992: 35-36). Alienation can be described as a phenomenon where a thing is disconnected from its producer or owner, but yet it continues to exist (Ollman, 2012: 132). Alienation happens frequently. For instance, commercial surrogacy involves selling women's reproductive capacity and, thus, women are alienated from their reproductive capacity. Since women's reproductive capacity is so crucial to their human flourishing, women will lose control of their capacity to flourish when reproduction is sold in the market. (Fabre, 2013: 3, 2006, ch. 8).

The reasons above, though not exhaustive, make us perceive some exchanges as wrongful exchanges. However, although it is clear that exploitation and anti-commodification are two independent reasons to conceive some exchanges as wrongful, their complex relationship has not yet been elucidated. In what follows, I explicate two ways to object to the commodification of certain things because of the concern of exploitation. Our notion of exploitation will lead to different relationships between them. In the light of my distinction between unfair exploitation and disrespectful exploitation according to the different quality of A's gain, I offer two anti-commodification claims as regards the charge of exploitation. Let us begin with their external connection.

### 3.3.2. External Connection: Commodification Facilitates Unfair Exploitation



One thing is clear: if we want to explore the relationship between exploitation and commodification, we centre on market exchange. The most relevant to the charge of exploitation is the anti-commodification claim that *some things should not be transacted for gain* (Andre, 1992: 36-42). The anti-commodification claim and the charge of exploitation share the similarity that it is morally impermissible to transact something for gain. Besides, the subject that we concern could be either a buyer and seller or the object exchanged. When some goods are exchanged in the market, the market participants (sellers and buyers) and the object exchanged would be affected. Thus, the anti-commodification claim suggests that some things should not be transacted for gain because such transactions would affect the market participants and the object exchanged, respectively. Let us start with their external connection.

The first and manifest connection between exploitation and commodification is to treat the concern of *unfair exploitation* as a reason against the commodification of certain things. The external connection claims that certain goods' commodification may exploit sellers or buyers (Andre, 1992: 40-41). Selling these goods in the market may increase the *possibility* of buyers or sellers being exploited. If so, prohibiting exploitation serves as a reason to object to the commodification of certain things.

Debra Satz (2010: 97) defends this view. She argues that when market participants are in an inferior bargaining position, or are so vulnerable that they would accept any terms available to them, *they are more likely to be exploited* than those situated in an advantageous position. Their tendency to be exploited would not occur had certain things not been commodified. In some cases, individuals would not be taken unfair advantage of, had an attribute of that person not been sold in the market. The commodification of a person (or a part of that person) then may increase the chance that others would take unfair advantage of them.

Note that in their external connection, exploitation and anti-commodification are still

treated as two separate claims, and their connection is *external*. In their external connection, only after a person, or a part of that person, has been commodified, can we assess whether such market exchanges will increase the chance of being exploited. Chronologically, the process of commodification precedes that of exploitation. Their connection is external because the commodification of a person is *not* concomitantly the exploitation of that person. Rather, the commodification of a person only increases their chances of being exploited: it does not necessitate exploitation.

The external connection is widely used by theorists concerning human tissue or commercial surrogacy (Malmqvist & Zeiler, 2015: 7; Walker & van Zyl, 2017; Wilkinson, 2003; Fabre, 2006: Ch.6 & 8). For them, human organs and women's reproductive capacity ought not to be commodified and transacted in the market, just because this will increase the chance of the sellers to be exploited. Once human organs and women's reproductive capacity are forbidden to be sold for money, even if these sellers are vulnerable, buyers or firms would not have any chance to exploit them.

Cécile Fabre is another advocate of the external connection. She first provides three jointly sufficient conditions of wrongful exploitation, which are borrowed from Wertheimer (1996) and David Miller (1987): they are,

- (a) "A benefits from the transaction."
  - (b) "[T]he outcome of the transaction is harmful or (in the case of a mutually advantageous transaction) unfair to B."
  - (c) "A gets B to agree to the transaction by seizing on some features of B's, or of his situation, such that B would not agree to the transaction otherwise."
- (Fabre, 2006: 142)

For Fabre, it is sometimes true that organ sellers are very poor and that organ buyers or

firms take advantage of them. However, the organ sellers are similarly taking advantage of the organ recipient's desperate need (2006: 145). Both the organ sellers and recipients could be the victim of *unfair exploitation*. Indeed, in the case of organ exchange, the terms of their transaction could be unfair to the sellers or the recipients. The external connection, then, relates to *unfair exploitation* where the occurrence of exploitation depends on whether the terms of a transaction are fair or not. Whatever criteria one takes, if the transaction's terms are fair, no exploitation occurs. This is the case even if the commodification of certain goods may allow the vulnerabilities of buyers or sellers to be used, or may place buyers or sellers in a position of weak agency. Hence, the first connection between exploitation and anti-commodification is to adopt the notion of unfair exploitation as a reason to object to the commodification of certain goods for gain. This is their external connection.

The external connection, however, does not exhaust the relationship between exploitation and anti-commodification. In addition to unfair exploitation, there is another way to understand the notion of exploitation, and, therefore, the second connection between exploitation and anti-commodification.

### **3.3.3. The Merely Means Principle: Commodification Mistreats What is Exchanged**

The second consideration of the anti-commodification claim argues that *some market exchanges mistreat what is exchanged* (Andre, 1992: 37-39). Apart from the consequence of the exchange, one prominent reason to object even to the harmless and non-exploitative commodification of a person for gain is that human beings should not be treated as a mere means (Andre, 1992: 38). The objection concurs with Kant's idea that people ought to treat

human beings always an end and never merely as a means (Kant, 2017: 171-218).<sup>41</sup> For instance, involuntary exploitation violates Kant's Merely Means Principle in the sense that the exploitee does not consent to an exploitative contract.

*However, the Merely Means Principle* can be interpreted and extended in couples of ways (Parfit, 2011a: 212-232, 2011b, 145-147). On Parfit's interpretation, we treat people as merely a means, either when our actions fail to obey relevant moral belief, or when we choose not to bear relevant burdens for that person (2011a: 214). Concerning the Merely Means Principle, the moral belief that guides our interactions with others, and whether we take relevant burdens for the sake of others, are two important factors that determine whether we treat people as a means only. Besides, imposing harm on a person in certain ways will violate the Merely Means Principle. According to Parfit's *Harmful Means Principle*, to impose harm on a person to achieve some aim triggers the Harmful Means Principle if the act is not the least harmful way to achieve the aim *and* the harm we impose is disproportionate to the goodness the aim will bring about (2011b: 145-147).

However, it is controversial to hold that the Merely Means Principle is an absolute principle under any circumstances. Victor Tadros, for example, proposes and defends a version of the Merely Means Principle, which claims that "it is permissible to harm a person as a means to an end if that person would have had an enforceable duty to avert the threat were she able to do so, even if, in exercising her duty she would be harmed to the same degree" (2011: 127-137). All of these could be further contested and interpreted; but it is clear that in some cases, when people are commodified for gain, they are treated as a means only.<sup>42</sup> Especially when the exploiter has better ways than imposing harm on a person by commodifying that person, to achieve her aim, the exploiter treats that person

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<sup>41</sup> See Wood (2007) and Onora O'Neill (1989; 2013) for Kant's ethics.

<sup>42</sup> It is contested that what kinds of goods should not be commodified according to Kant's ethics, and I leave it open.

as merely a means (Parfit, 2011a: 229; 2011b, 145-147).

Now we are focusing on another kind of the exploitation-based anti-commodification claim, which is different from the external connection. Take commercial surrogacy, for example. Both the surrogate mother's reproductive capacity, and the children, are commodified and sold in commercial surrogacy. Opponents of commercial surrogacy tend to argue that since commercial surrogacy treats women's reproductive capacity and the resultant children as commodities, it disrespects them by treating them merely as a means. However, in what sense are the surrogate mother's reproductive capacity and the children treated as merely a means and, therefore, disrespected? According to Anderson, surrogacy contract treats the surrogate mother as a means merely in the sense that the contract requires them to suppress their love to their children and denies their feelings of grief (1990: 80-87; cf. Fabre, 2006: 196-200). One interpretation of the Merely Means Principle claims that we ought to treat others with consideration by responding "with sensitivity to her and to her emotional relations with others" (Anderson, 1990: 81). When ignoring the surrogate mother's emotion and feelings, firms of commercial surrogacy treat the mother as if it were merely a fungible good. The behaviour is disrespectful and violates the Merely Means Principle.

Moreover, as some empirical research shows, in commercial surrogacy, the surrogate mother can suffer psychological harm (Longcope, 1987: 18-19; Peterson, 1987: B1, B4).<sup>43</sup> The surrogate mother tends to suffer from emotional problems, which can hardly be compensated for by money (Anderson, 1995: 180-181). Commercial surrogacy, at least, is a wrongful market exchange in the sense that it causes harm to the surrogate mother. In this case, the exploiter treats the surrogate mother as merely a means by imposing incurable harm on the surrogate mother to achieve her aim, without benefiting the mother

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<sup>43</sup> Cf. Anderson (1995: 172).

sufficiently. In parallel, as many argue, the surrogate mother could be exploited in the sense that the buyer takes advantage of her vulnerability to gain unfairly; and we may have reason to ban such exchanges.<sup>44</sup> The external connection then claims that we ought not to commodify women's reproductive capacity because doing so may lead to unfair exploitation. However, do we have a reason other than the concern of unfair exploitation to consider the exchange of certain goods for gain inappropriately? Yes, some may insist.

### 3.3.4. The Internal Connection

Donna Dickenson offers another way to understand the notion of exploitation as a reason to object to a person's commodification. In Dickenson's view, when considering exploitation, it is missing the point to focus on "disparity of remuneration"; instead, when human tissue is turned into a commodity, they are exploited (2017: 63). As she points out that:

If human tissue cannot be turned into a commodity without harming people's worth as persons, then any form of tissue sale, including but not exclusive to female tissue such as eggs, is in a sense *exploitative, whatever price is offered for it*. (Dickenson, 2017: 63, my italics)

The point in the paragraph is that when gainful commodification of a person disrespects that person, it constitutes exploitation, regardless of whether or not the price of the commodity is fair or unfair. Dickenson's understanding of exploitation is what I called disrespectful exploitation at the end of Chapter 2. Contrary to unfair exploitation where the exploiter gains unfairly relative to a fairness baseline, in disrespectful exploitation, the exploiter gains from the disrespectful transaction with the exploited, in which all of her

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<sup>44</sup> See Anne Phillips (2017) and Agomoni Ganguli Mitra (2017).

gains are morally unjustified. This explains why, for Dickenson, it does not matter what the price is for an inappropriately commodified person since the commodity's price relates to a concern of fairness and not disrespect. Dickenson, then, offers another exploitation-based reason to object to the commodification of a person for gain than the reason proposed by the external connection.

The internal connection between exploitation and anti-commodification, then, claims that we ought not to commodify a person (or an attribute of that person) for gain. Such transactions violate the Merely Means Principle and, therefore, constitute disrespectful exploitation, where all of the exploiter's gains are morally unjustified. The transactions are 'internal' because the disrespectful market relations, affirmed by the commodification theories, guarantee that any profits that the exploiter gains from such disrespectful market relations would be considered morally unjustified. In their internal connection, the quality of the exploiter's gains is *not* assessed by a standard of fair distribution, according to which the terms of a transaction could be fair and justifiable. Rather, any profits, gained from inappropriate market relations, would be deemed disrespectful and thus, morally unjustifiable.

Moreover, unlike their external connection where the commodification of a person and the exploitation of that person are treated as two independent variables, the internal connection regards the two variables as one thing. In their internal connection, the disrespectful commodification of a person for sale, in itself, *is concomitantly* the exploitation of that person. There is no chronological order between them. Note that the controversy of how to interpret the Merely Means Principle would not affect my distinction between unfair gain and disrespectful gain. At most, it only affects the ratio between unfair exploitation and disrespectful exploitation. Hence, when we employ disrespectful exploitation, there is another way to object to the commodification of a person (or a part of that person) via exploitation, that is, the internal connection.

Having presented two connections between exploitation and anti-commodification, I criticise and revise (D3) according to the internal and external connections. Note that the two connections are employed to criticise (D3) without attempting to offer any normative implications.

### 3.4. A Critique of (D3)

In this section, I argue that (D3) is not an assertion of exploitation and propose two variants of (D3) according to the internal and external connections.

#### 3.4.1. (D3) is not a Statement of Exploitation

(D3) claims that A exploits B when A commodifies or treats B as a fungible object of market exchange (Sample, 2003: 57). However, commodifying a person does not amount to exploiting that person. (D3) is hardly an exploitation claim, but an anti-commodification claim, at most. This is because, according to the general definition of *mutually beneficial and consensual exploitation*, A exploits B if and only if (1) A gains benefits by (2) taking advantage of B (3) in their mutually consensual transaction. (D3), however, states neither (1) nor (2). To commodify B inappropriately, though it could wrong B in some ways, is not to exploit B if A does not gain benefits from the commodification of B. Moreover, even if A benefits from B's commodification, if A does not take advantage of B, no exploitation occurs. For instance, suppose Ann owns a company in which Bob works for Ann, and Ann's company profits greatly through commodifying Bob's special tissue, which violates the Kantian norm that we ought not to treat people as a means only. Ken, Ann's son, thus receives a great amount of money from Ann as leisure expenditure. In this case, although Ken gains benefits from the commodification of Bob's special tissue, Ken does not exploit Bob since



Ken does not take advantage of Bob. The case reaffirms that to be exploitation, a causal connection between the exploiter and the exploitee is necessary (Elster, 1982: 365-366).

Hence, as Ferguson & Steiner (2018: 541) indicate, while some kinds of transactions of (D3) are disrespectful and sometimes viewed as exploitation, it is not clear in what sense such transactions are exploitation. It seems (D3) has nothing to do with exploitation. (D3) can be viewed as an assertion of exploitation when revised according to the internal and external connections. I then offer two variants of (D3), which would be viewed as an exploitation-based anti-commodification claim.

### **3.4.2. The First Variant of (D3): The Internal Connection**

Consider the internal connection first. The internal connection claims that to gain benefits by commodifying a person (or an attribute of that person)—in a way that violates the Merely Means Principle—constitutes exploitation. So, I suggest the first variant of (D3):

(D3’): A exploits B when A takes advantage of by commodifying B (or an attribute of B) to gain benefits—in a way that violates the Merely Means Principle that we ought to treat people always as an end but not a means only

(D3’) is an assertion of exploitation according to the internal connection. The significant difference between (D3) and (D3’) is that while (D3’) meets (1) and (2)—the two elements of exploitation, (D3) does not. To be exploitation, A must gain benefits from B by taking advantage of B. In (D3), A does not exploit B, because (1) and (2) are unsatisfied. Secondly, what distinguishes (D3’) from (D3) is that (D3’) defines the inappropriate commodification of a person by appealing to the Merely Means Principle. As Andre (1992: 36) suggests, one reason to object to the exchange of certain goods is that it violates the Kantian norm that

we shall always treat human beings as an end and not as a means only. When we commodify a person or a part of that person in ways that violate the Merely Means Principle, we disrespect her intrinsic value and treat that person as a means only (Dickenson, 2017: 63). Hence, the Merely Means Principle offers a standard to signify when commodifying a person is inappropriate.

Moreover, in (D3'), what is at stake is not that certain market exchanges are bad for the market participants (sellers and buyers). Rather, it primarily concerns *the object* sold and bought in the market. This means that in (D3') even if the transaction's terms are fair relative to a fairness baseline, A still exploits B in the way that A gains disrespectfully by taking advantage of the commodification of B. Hence, (D3') is a form of disrespectful, rather than unfair, exploitation; A's profits, gained from the commodification of B against the Merely Means Principle, are morally unjustified. Hence, Dickenson is correct to point out that it is misleading to focus on the prices of B as a commodity. Instead, in (D3'), the exploiter ought not to profit from the inappropriate commodification of B. When benefiting from such disrespectful transactions by pressing advantage on B, A exploits B.

(D3') then provides an exploitation-based reason to object to the commodification of certain goods, that is, the internal connection between exploitation and anti-commodification. It claims that we ought not to commodify a person (or an attribute of that person) because to gain benefits from the commodification of a person in ways that violate the Merely Means Principle, constitutes exploitation concomitantly. (D3'), then, is a form of *the process-focused view*, that is, to take advantage of B's disadvantage for gains, is sufficient for exploitation. More importantly, (D3') passes the fairness test that (D3') is exploitative in the sense that A gains disrespectfully, rather than unfairly, from the inappropriate commodification of B. (D3') offers a form of the internal connection.

### 3.4.3. The Second Variant of (D3): The External Connection

Apart from revising (D3) according to the internal connection, it is possible to revise (D3) in terms of the external connection. The external connection claims that the commodification of B will increase the possibility of B's being exploited. The second variant of (D3), then, is as follows:

(D3''): A exploits B when A takes unfair advantage of the commodification of B.

Unlike (D3), (D3'') is a form of exploitation in that (D3'') meets two fundamental elements of exploitation: (1) A gains and (2) by taking advantage of B. Moreover, (D3'') is consistent with the external connection in that the commodification of B does not, in itself, constitutes exploitation. Rather, the commodification of B only increases the possibility of B's being exploited. Hence, (D3'') is a form of unfair exploitation, in which the exploiter gains unfairly according to a fairness baseline. Note also that (D3'') is different from (D3') because in (D3'') the commodification of B does not trigger the Merely Means Principle. Thus, the quality of A's gains in (D3'') belongs to the category of unfair gain, which concerns whether the price of a commodity is consistent with a fairness baseline.

Having revised (D3) according to the internal and external connections, let us consider two objections to my distinction between unfair gain and disrespectful gain.

## 3.5. Objections and Replies

In introducing these objections, it may be helpful to provide a summary of my view so far. In Chapter 2, I argued that the unfairness in the terms of a transaction is not necessary for exploitation. If exploitation is a form of wrongful gain, and if unfair gain is not necessary

for exploitation, there must be another way to perceive exploitation as wrongful gain. Contra unfair gains where A gains unfairly relative to a fairness baseline, I have indicated that disrespectful gain is another way to perceive exploitation as wrongful gains. Unfair gain and disrespectful gain, jointly, constitute the first necessary condition of my account of exploitation. My central claims in Chapters 2 and 3 could be summarised as follows:

- (i) ***Unfair Gains***: A, the exploiter, gains unfairly relative to a norm of fair distribution.
- (ii) ***Disrespectful Gains***: A, the exploiter, gains from a disrespectful transaction with B, one that violates the Merely Means Principle.

Now let us consider two objections. The first objection claims that the unfairness of a transaction's terms is necessary for exploitation and so my inclusion of (ii) is mistaken. The first objection, thus, insists that exploitation is a form of wrongful gain and that unfairness is the only way to understand the quality of the exploiter's wrongful gain. The first objection is implausible because some market exchanges are exploitative in more ways than the unfairness in transactions, such as child labour, organ sales, and commercial surrogacy. These cases involve the *inappropriate* commodification of an attribute of human beings for sale, and, therefore, they are disrespectful market exchanges in the sense that people are treated as merely a means. More importantly, what makes these cases exploitative is not that the price of human tissue is unfair relative to a fairness baseline. Condemning the employer of child labourers for paying unfair wages misses the wrongness of child labour itself. Rather, the more fundamental concern we have is that the exchange should not happen—children's labour is not an item that should be viewed as something that adults are morally permitted to buy—but not that exchanges should be done on fair terms. If the unfairness is not what makes these cases exploitative, and if

exploitation is a form of wrongful gain, we must conclude that unfairness is not necessary for exploitation and there are other ways to understand the quality of A's wrongful gain.

The second objection questions whether unfair gain and disrespectful gain exhaust all possible understandings of exploitation as wrongful gain. If so, my account of exploitation is incomplete. While these two forms of the exploiter's wrongful gain may not exhaust all possible understandings of exploitation as wrongful gain, they are sufficient for exploitation. There might be other ways of exploiting, and I leave that as an open question. Moreover, since I adopt a pluralist position of what a benchmark of fairness is, A's excessive benefit is only one way to understand the notion of unfair gain. As I mentioned in Chapter 2, other understandings of fair distribution are possible, and I remain open to this issue.

### 3.6. Conclusion

I have explained when and why the process-focused view — taking advantage of B's disadvantage — suffices to exploitation even if the terms of their transaction are fair. In my view, the process-focused view constitutes exploitation only if it passes the fairness test. The quality of the exploiter's gains in the process-focused view belong to disrespectful gains, rather than unfair gains. Apart from the distinction of two forms of wrongful gain, another major difference between unfair exploitation and disrespectful exploitation is that disrespectful exploitation violates the Merely Means Principle that we ought not to treat people merely as a means. Then, when removed of the concern of unfairness, the Merely Means Principle explains why (D1) to (D3) constitute disrespectful exploitation. Hence, disrespectful exploitation occurs when A takes advantage of B's inferiority to gain benefits in a way that violates the Merely Means Principle.

In Chapter 2 and 3, I have explicated one of the two conditions of my account of

exploitation: the exploiter makes wrongful gain through unfair or disrespectful transactions. In Chapter 4, I explicate the second condition of my account of exploitation, which I term *the Relational condition*: A takes advantage of B's weaker agency, compared to A's agency. The notion of advantage-taking behaviour is another key element of my notion of exploitation. Since the Relational condition is necessary for exploitation, either unfair exploitation or disrespectful exploitation has to be met to count as exploitation. The Relational condition is crucial to our understanding of exploitation, but theorists give different interpretations of the causal connection between the exploiter and the exploited. In Chapter 4, I defend the Relational condition against four alternatives and explain why it is more plausible than alternatives.

## 4. Exploitation as a Relational Notion

In Chapter 2 and 3, I argued that exploitation is a form of wrongful gain, and there are two distinct ways to understand wrongful gain, namely, unfair gains and disrespectful gains. The two forms of wrongful gain constitute one of the necessary conditions of my account of exploitation. In Chapter 4, I shall explore and specify another necessary condition of it, namely, what it means to ‘take advantage of another.’ More concretely, for exploitation to occur, the exploiter must enjoy some kind of advantage in an asymmetrical relationship with the exploitee. Otherwise, the exploiter would not be able to extract wrongful benefits from the transaction with the exploitee. Then, we must have a clear understanding of what ‘taking advantage of’ means and how it differs from theft, coercion, and manipulation. The formulation of ‘taking advantage of’, thus, is another key constituent of exploitation.

In Chapter 4, I propose and defend an interpretation of ‘taking advantage of’, namely, the Relational condition. It claims that A exploits B only if A takes advantage of B’s weaker agency, compared to A’s agency. The core idea of the Relational condition is that the exploiter’s advantage in an asymmetrical relationship with the exploitee depends on the exploiter’s comparative, rather than absolute, agency. Having articulated my interpretation of ‘taking advantage of’, I shall present four alternatives of ‘taking advantage of’: *Roemer’s purely distributive approach*; *the Historical view* (suffering from past injustice); *the Non-Comparative view* (basic need-based view of vulnerability); and *the Complex view* (exploitation as domination). I shall argue that, although these alternatives are correct in that they can identify exploitation in some cases, they are too restrictive to serve as a necessary condition of exploitation. In other words, they fail to identify exploitation in a variety of social relations because their views cannot explain why the exploiter has an advantage in the asymmetrical relationship with the exploitee in general. Instead, the Relational condition is more plausible than the alternatives in that it can identify multiple forms of exploitation

in a variety of social relationships, where the exploiter obtains more advantages than the exploitee.

I begin Chapter 4 by proposing the Relational condition in section 4.1. The Relational condition holds that A exploits B *only if* A takes advantage of B's weaker agency, compared to A's agency. Section 4.2. then introduces and objects to Roemer's purely distributive account of exploitation. Section 4.3. introduces the distinction between historical and ahistorical accounts of exploitation and argues that exploitation is ahistorical in nature. In sections 4.4. and 4.5., I examine two alternatives of the ahistorical account of the causal component: *the Non-Comparative view* and *the Complex view*. I argue that the Non-Comparative view, which appeals to B's insufficiency of basic needs, is flawed in that B's insufficiency of basic needs cannot always explain why the exploiter enjoy advantages in exploitation. I then conclude that the Complex view — particularly Vrousalis's exploitation as domination — is flawed because exploitation needs not involve domination. In section 4.6., I summarise my account of exploitation.

#### 4.1. The Relational Condition

*The Relational condition* states that:

A exploits B *only if* A takes advantage of B's weaker agency, compared to A's agency.

Exploitation, as Phillips (2017: 110) points out, is a form of inequality in which one party to a transaction treats another as something inferior. The exploiter is capable of extracting benefits from the transaction with the exploited only when and because the exploiter is in a superior position against the exploited. There must be some kind of asymmetry between



the exploiter and the exploited to make the exploiter's extraction of wrongful benefits possible. Theorists of exploitation disagree on the moralised feature of the exploited that constitutes the asymmetrical relationship. For instance, proponents of the process-focused view contend that taking advantage of the exploitee's vulnerability, in itself, constitutes exploitation. The vulnerability approach consists of two claims concerning the advantage-taking behaviour: one is that B's vulnerability makes A's extraction possible (the causal explanation); another is that A's behaviour is morally impermissible for some reason (the moral explanation).

My view, then, differs from the alternatives in the way that I hold a thin notion of the asymmetrical relationship that makes A's extraction possible. It is thin in the sense that it can include a variety of kinds of human interaction, some of which do not refer to the exploitee's vulnerability or the domination of the exploiter. We need a thin notion of the asymmetrical relationship because exploitation may take place within a variety of human interactions in different contexts. The asymmetrical relationship may occur on campus, in the family, within a society, or in international trade. On the other hand, theorists of exploitation connect the advantage-taking behaviour with notions, such as vulnerability, domination, or background injustice, to explain the moral wrongness of exploitation. However, the Relational condition aims to preserve the purity of the notion of exploitation by formulating the advantage-taking behaviour as thin as possible, so that my account of exploitation would not be intertwined with other notions. The thin and pure Relational condition distinguishes my account from the alternatives. Now let me explain each element of the Relational condition.

#### **4.1.1. The Definition of Agency**

In a very broad sense, agency denotes the performance of an agent's capacity to act

(Schlosser, 2015: 1). Let us consider the features of an agent first. According to List and Pettit, an agent consists of three basic elements: “it has representational states, motivational states, and a capacity to process them and to act on their basis” (2011: 20). For List and Pettit, representational states refer to a function of portraying the world, while motivational states refer to a function of initiating actions (2011: 21). Moreover, the minimum standard that an agent must contain is “standards of rationality”, which enable an agent to connect with others and circumstances (List & Pettit, 2011: 24). Taken together, an agent has a capacity to perceive the world, to infer from its knowledge of the world, and to motivate itself to act. Nonetheless, to exercise agency is more than being an agent.

One performs her agency when she can act or rearrange an array of resources corresponding to a specific situation. According to Sewell (1990: 20), agency refers to an agent’s capacity to rearrange an array of resources in an innovative way. This means that an agent performs her agency when she can reorganise resources in a creative way. Although a minimum sense of agency inheres in all adult humans, both the forms and the strengths of agency vary greatly from one person to another, from one culture to another (Sewell, 1992: 20-21). The notion of agency has its *locality*. Since the agency is conditioned by “a specific range of cultural schemas and resources available in a person’s particular milieu”, the agency is a product of a specific culture and history (Sewell, 1992: 20). Besides, the strength of agency differs greatly across and within societies and depends largely on how one rearranges resources under a specific context. For instance, provided that A and B have the same amount of resources, how they arrange the resources determines their different strengths of agency. The agency of the president in the U.S. is stronger than that of the president in some other countries because the U.S. has more resources in general than other countries. Also, different social groups’ agency differs as well, e.g., the strength of the working class’s agency may differ from that of capitalists. Thus, to calculate one’s strength of agency, many factors have to be jointly considered.

I adopt the notion of agency to formulate my account of exploitation because it can accommodate most, if not all, relevant factors that frame the asymmetrical relationship in a variety of social interaction. The notion of agency serves as an umbrella concept that takes all the relevant factors into account and transfers these factors into the term of agency. When properly converted, we can turn these relevant factors, e.g., bargaining capacity, the level of basic needs, opportunity, social positions and so forth, into a unit of agency. So described, the notion of agency can help to capture properly multiple forms of exploitation. Moreover, in adopting the notion of agency, my account can receive support from sociology, a discipline that concentrates on how people obtain disadvantages within multiple forms of power relationships and, therefore, can adjust itself according to the new development of social sciences and identify new forms of asymmetrical social relationship. My account of exploitation can identify more exploitation than alternatives because the Relational condition can properly identify one's relative position in a social relationship without sticking to a specific factor.

#### **4.1.2. The Comparative, Rather Than Absolute, Notion of Agency**

The core of the Relational condition is that it adopts a *comparative*, rather than *absolute*, notion of agency. This means one's level of agency within an interaction will depend on with whom one interacts. Whether or not one will obtain advantages in a transaction does not depend *solely* on one's absolute agency, which is the sum of one's overall wealth, education levels and rights, and so on. Rather, it depends on the agency of one's interactor under a specific circumstance. Therefore, my use of the notion of agency adopts a comparative form in the sense that the strength of one's agency is subject to one's rivals but does not depend solely on one's absolute attributes. So understood, whether the rich will have advantages in a relationship will depend on their circumstances and with whom

they interact.

Consider *Greedy Mountain Rescuer*. Suppose Allen is poor that he has to collect mushrooms in the mountains and Bob is rich and loves to climb alone. One day, Bob was stranded in a pit accidentally, and Allen happened to find Bob and offered to rescue Bob only if Bob gives Allen half of his properties. Bob accepts the deal and it is clear that Allen exploits Bob. In this case, even if Allen is poorer than Bob, he can exploit Bob. This means that occupying an advantageous position in an interaction will depend on one's interactor's agency in that specific circumstance.

Some might contend that Bob is exploited because his agency is below an absolute threshold, such that anyone who happened to walk by could exploit him. Therefore, it is one's absolute, rather than comparative, agency that matters. However, this view fails to notice that if Allen fell into the pit as well, he cannot exploit Bob. Moreover, exploitation may occur between millionaires whose agency is above an absolute threshold. When Bill Gates desperately wants Van Gogh's paintings, other millionaires who have the paintings may exploit Gates. This case illustrates that when assessing one's agency in an interaction, it is the comparative, rather than absolute, agency that matters most.

#### **4.1.3. Two Interpretations of The Notion of 'Taking Advantage of'**

Roughly, exploitation assumes that the exploiter obtains certain advantages on which she "capitalizes to induce the exploited to engage in this relatively less beneficial exchange" (Miller, 1990: 186). The advantage-taking behaviour, thus, implies that the exploiter presses her advantage over the exploitee to extract wrongful benefits. Nonetheless, regrettably, the meaning of advantage-taking behaviour has not yet been fully explored. Currently, there are only two interpretations of advantage-taking behaviour. One is proposed by Jon Elster (1982). According to Elster, A takes advantage of B by "adding an option to [B's]

opportunity set that is better both for him and for me than the option preferred by [B] prior to the expansion” (1982: 364). Elster’s definition correctly grasps the essence of exploitation. An exploitative deal is typically worse than a fair deal, but better than the options available to the exploited before the exploitative offer. Hence, the exploiter expands, rather than restricts, the exploitee’s opportunity set. The first interpretation of the notion of ‘taking advantage of’ suggests that the exploiter is capable of providing a deal that is worse than fairness, but better than the exploitee’s current opportunity set.

Another interpretation of advantage-taking behaviour is proposed by Benjamin Ferguson (2013). For him, advantage-taking behaviour involves the exploiter’s intentions or attitudes that are morally relevant and problematic (Ferguson & Steiner, 2018: 537). That is to say, for Ferguson, the exploiter is meant to press her advantage over the exploiter to gain benefits. Conversely, she does not exploit another when she does not intend to gain benefits by pressing her advantage over the exploited. Moreover, Ferguson’s definition provides a more active interpretation than Elster’s. Since the would-be exploiter can decide whether to exploit or not, there is no such thing as exploiting accidentally. Hence, intentionality is a necessary condition of Ferguson’s account of exploitation. In what follows, I shall revise Elster’s interpretation and argue against Ferguson’s interpretation that intentionality is not necessary for exploitation.

#### **4.1.3.1. Supplementing Elster’s Interpretation**

Elster’s account needs to be revised because his account holds that exploitation always involves someone unfairly gaining from a transaction. However, as I have argued in Chapters 2 and 3, exploitation involves two distinct forms of wrongful gain: unfair gain and disrespectful gain. His account should take into account both fairness and respectfulness as relevant factors for exploitation. A qualified defence of Elster’s view then

claims that the advantage-taking behaviour implies that the exploiter adds an *unfair and/or disrespectful* option to the exploitee's opportunity set. As such, an exploitative offer is either worse than an unfair but not disrespectful, a fair but disrespectful, or an unfair and disrespectful offer, and it is better than the options available to the exploited before the contract. Let us consider three different cases.

First, we could have exploitation in which the transaction is unfair but not disrespectful. Under certain conditions, wage labour may be a case in point. Since the employment relationship in general does not need to involve degrading employees, exploitation in wage labour can only take the form of unfair exploitation. An unfair but not disrespectful offer, then, is better than the exploitee's status quo but worse than a fairness baseline. Second, we could have exploitation in which the transaction is not unfair but involves disrespectful treatment. One example would be the buying of organs. The purchase of organs might (in certain circumstances) be fair, but it is disrespectful. Organ trading disrespects the seller because we treat people as merely a means when we treat their organs as a fungible commodity. Even if the price of one's organ is fair according to a fairness baseline, the exploiter ought not to gain benefits by commodifying the exploitee's organ. Thus, a fair but disrespectful offer is better than the exploitee's status quo but worse than a fair and respectful offer.<sup>45</sup> This leaves the third possibility. An offer might be both *unfair and disrespectful*. An example here might be child labour. Child labour is disrespectful because we think that to hire children as workers fails to take their interests seriously and that the exploiter treats them as merely a means. Also, child labour is unfair in the sense that since the wage for a child is usually less than the wage for an adult, other things being equal, the exploiter gains excessively by hiring child workers. Consequently, an unfair and disrespectful offer is better than the exploitee's status quo but worse than a

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<sup>45</sup> For instance, the buyer can think of other ways to help the organ sellers so that the seller does not need to sell her organ. So understood, a respectful offer should try to solve the difficulty that the would-be exploited faces, and, therefore, it is better than a disrespectful offer.

fairness baseline and a respectful offer.<sup>46</sup>

Hence, an exploitative offer, in general, is better than the exploitee's status quo but worse than a fairness baseline or a respectful offer. Regarding exploitation, it is important that we include cases of both unfairness and disrespectful treatment into account. Having revised Elster's interpretation, I then reject Ferguson's view.

#### 4.1.3.2. Intentionality is Neither Necessary Nor Sufficient for Exploitation

The exploiter's intention to exploit is not necessary nor sufficient for exploitation; therefore, Ferguson's interpretation is flawed. Consider the sufficient condition first. One can intend but fail to exploit another. Wertheimer correctly suggests a distinction between "the claim that A *exploits* B" and "the claim that A *acts exploitatively* towards B" (1996: 209, his emphasis). The difference between them lies in whether A succeeds in gaining unfair benefits from the transaction. In both cases, even if A intends to exploit B, if A does not secure any benefits from the transaction — e.g. B declines A's unfair offer — no exploitation occurs. An owner of garment sweatshops might seek to gain unfairly by paying her employees a low salary. Put simply; the owner seeks to exploit her employees. However, if the owner fails to obtain any eventual benefits from the employment relationship, her intention to exploit would not constitute exploitation. The exploiter's intention to exploit is not sufficient for exploitation.<sup>47</sup>

Consider the necessary condition. In individual transactions, the exploiter's intention to exploit is not necessary for exploitation (Steiner, 2018: 6-9). A can exploit B even if A is unaware of the exploitative effect on B. Exploitation may be performed unintentionally.

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<sup>46</sup> For instance, the employer can provide free education and training to local children so that the children are in a better position in the job market when they grow up.

<sup>47</sup> Since Ferguson holds that the exploiter's intentionality is necessary for exploitation, he might agree that intentionality is not sufficient for exploitation.

For instance, A might mistakenly believe that the terms of her transaction with B are fair relative to a fairness baseline. Moreover, the fact that A may exploit B unintentionally is particularly manifest in structural exploitation where the wrong of structural exploitation is not caused by a particular person but by all participants within the structures.<sup>48</sup> For example, some capitalists might feel innocent when accused of exploiting workers because they might have made efforts to provide the best offer to their employees. ‘How could capitalists exploit workers unintentionally?’ They might ask.

In response, by definition, structural exploitation refers to a situation where social structures encourage exploitation, and the cost of non-exploitation is very high (Young, 2006: 114). Exploitative structures drive employers to exploit, whether or not they intend to exploit. Conversely, if we deny that A can exploit B unintentionally, we then have to acknowledge that structural exploiters are not exploiting others. This is a loss, rather than a gain, to an account of exploitation. Hence, although the exploiter may intend to exploit others, and their intention to exploit might make their exploitation more culpable, her intention to exploit others is not necessary for exploitation.

Overall, the intention to exploit is neither sufficient nor necessary for exploitation. However, this does not reject the relevance of intentionality in exploitation. The intention to exploit can be wrongful in itself. One should not seek to exploit another anyway. Moreover, whether or not A intends to exploit does make a moral difference to the culpability of the exploiter. We will think that intentional exploitation is more wrongful than unintentional exploitation (Wertheimer, 1996: 209). Intentionality is relevant in exploitation.

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<sup>48</sup> I will explore the issue of structural exploitation in Chapter 7.



#### 4.1.4. The Exploited: Two Further Clarifications

Having explained each element of the Relational condition, it is worth clarifying two further questions concerning the exploitee. One is for the improvement condition: must the exploitative offer improve the exploitee's condition? Another is, even if the offer improves B's condition, what is the baseline to assess the improvement to B's condition after the offer? I explore the two questions.

##### 4.1.4.1. The Improvement Condition

An exploitative offer should be better than B's opportunity set prior to the offer and, thus, it should improve B's condition. If not, the offer is unattractive, and B will decline it. In most cases, the exploited can assess whether the offer will eventually improve her condition sooner or later. However, it is possible that an exploitative offer does not actually improve B's condition. The case occurs in two major ways. One is that the alleged exploiter makes the exploited mistakenly believe that the offer will improve their situation, i.e., A deceives B. A fraudulent exploitative offer is obviously wrongful and beyond our attention, because, presumably, our focus is mutually beneficial and consensual exploitation without involving manipulation, coercion, and fraud.

Another possibility is that although A does not deceive B, B may misjudge the actual effect of the offer. This case is not rare and belongs to *harmful exploitation*, that is, B loses after the transaction with A. Nonetheless, harmful exploitation is clearly wrongful because of the harm to B, and it is often the harm to B that grasps our attention (Wertheimer, 1996: 16). What really makes exploitation a distinct wrong is that it could be mutually beneficial and consensual without coercion and fraud. Hence, although in some cases an exploitative offer would not actually improve B's condition, if we can clarify the wrongness of the

mutually beneficial and voluntary exploitation, harmful exploitation becomes less theoretically problematic. The point would become clearer when we compare exploitation with ultimatum games.<sup>49</sup>

An ultimatum game refers to a bargaining situation in which a certain amount of money is divided between A and B (Nowak, Page, & Sigmund, 2000). While A can decide how to divide the amount of money between them, B can decline A's allocation. However, if B declines A's offer, both receive nothing in return; if B accepts A's offer, both will win the money according to the mode that A decides. Exploitation, thus, is similar to an ultimatum game in some respects. For instance, both are mutually beneficial in the sense that A and B (the exploiter and the exploited) would gain benefits relative to the no-transaction baseline, whatever agreement they will reach. Also, for B, it would be better to accept whatever A offers than decline the offer since, once again, it is better than B's current opportunity set (or B's status quo). Still, in either case, no coercion and fraud are involved. The similarities make exploitation a case of ultimatum games.

Nonetheless, in most ultimatum games, what surprises economists is that an equal share tends to be the frequent outcome (Nowak et al., 2000: 1773). The outcome is surprising because it seems rational for B to accept whatever allocation A decides because it is better than nothing (*ibid.*). The frequent outcome, therefore, is puzzling for economists and they wonder why B, as a rational agent, will decline A's offer if it is not for an equal share. However, unlike an Ultimatum game in which the experiment is conducted in an ideal situation where A and B are roughly situated in an equal position, exploitation takes place at a non-ideal situation where A and B are in an asymmetrical relationship. The asymmetrical relationship in which the exploitee has less agency could be caused either by the exploitee's own lack of capacity to assess the quality of a deal, or by the exploitee's

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<sup>49</sup> In an Ultimatum game, the permissibility of a game is irrelevant, so I leave the consideration of disrespectfulness aside and only focus on unfairness.

poor opportunity set, or both. This differentiates exploitation from ultimatum games and explains why the exploitee tends to accept, rather than decline, an unfair offer in contrast to the frequent outcome in Ultimatum games.

Very often, it is the exploitee's poor opportunity set, rather than her incapacity to properly assess the actual effect of an offer, which makes it the case that the exploited has less agency. For instance, even though the working condition of being a fisherman in developing regions has been notoriously unpleasant, an empirical study shows that many people in developing countries still prefer to be a fisherman in developed countries.<sup>50</sup> The reason behind the phenomenon cannot be that people cannot evaluate the quality of the offer properly. Rather, it is their lack of fair options that make the would-be exploited accept, or even prefer, an exploitative offer. Hence, most exploitative deals will improve the exploitee's condition sooner or later.

#### **4.1.4.2. What is the Baseline of the Improvement Condition?**

The improvement condition requires certain baselines to assess whether or not the exploitee's condition improves after an exploitative offer. Intuitively, there are two possibilities: the exploitee's status quo and a counterfactual situation. Thus, we assess both whether the offer indeed improves B's condition right after the contract or in a foreseeable future. While it is possible an exploitative offer may not improve and could even worsen B's status quo in the short-term, it could improve B's condition in the foreseeable fashion. Very often, people accept an exploitative offer not because it will improve their status quo immediately, but because it will improve their foreseeable future conditions compared to their situation before the offer. For instance, a fisherman contract may guarantee a large

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<sup>50</sup> See <https://www.indonesia-investments.com/news/news-columns/world-bank-report-on-indonesian-migrant-workers/item8387?>

wage only after the work has been done. Some then would accept the offer just because they think it will improve their condition in the foreseeable future. However, it is possible that the exploitee is better off in the short-term, but worse off in the long-term, e.g., the seller of kidney tends to gain a great amount of money in the short-term, but their health will be impaired in the long-term. It is hard to tell whether this case is mutually beneficial or harmful exploitation.

The counterfactual baseline is another baseline to assess whether the exploitee's conditions have improved after an exploitative offer. Theorists differ in what the counterfactual baseline is. Most hold the luck egalitarian baseline, that is, whether an exploitative offer really improves the exploitee's condition should be compared to an ideal situation where no one suffers unchosen disadvantages. I shall examine this view in chapter 6. To conclude, by definition, in mutually beneficial exploitation, the exploitee's status quo will be improved after an exploitative offer, sooner or later.

#### 4.1.5. Exploitation as a Relational Notion

Now, the Relational condition consists of three further sub-conditions:

- (i) ***The Comparative Condition:*** there is an asymmetrical relationship in which A's agency is superior to B's.
- (ii) ***The Sufficiency Condition:*** A's agency has to be strong enough that A is able to address an exploitative offer to B.
- (iii) ***The Unequal Treatment:*** given (i) and (ii), A has to use such superior agency to extract wrongful benefits from their transaction.

To elaborate: for the comparative condition, exploitation takes place in an asymmetrical relationship in which the exploiter's agency is superior to the exploitee. In general, we need to take relevant factors in their transaction to calculate and compare their relative agency.

The relevant factors vary case by case. However, in most, cases, it is the exploitee's poor option set that makes her accept an exploitative offer.

Regarding the sufficiency condition, the exploiter has to be capable of providing an offer that is better than the opportunity set available to B prior to their transaction and less than a fairness baseline, or/and a respectful offer. This suggests that A can exploit B *only if* A is capable of offering a deal that is better than B's current option set. If A is unable to provide offers better than B's existing options, even if A's agency is stronger than B's, exploitation ceases to occur. Consider *Pit*.<sup>51</sup> Suppose A and B are trapped in a pit. Somehow, A is able to escape from the pit alone while B cannot. In Pit, although A's agency is better than B in that A is capable of escaping from the pit, if A cannot rescue B and therefore cannot address an unfair offer to B, no exploitation can ever occur. Hence, A's agency should be stronger than B's, and A must be in a position to address an exploitative offer to B.

Consider the unequal treatment. The exploiter must interact with the exploitee in some way.<sup>52</sup> This is crucial because even if A's agency is stronger than B, and A is able to offer a contract which is better than B's opportunity set, still exploitation does not occur if A does not take advantage of B. An actual interaction must occur between A and B. Otherwise, A is merely capable of exploiting but does not actually exploit B. Moreover, *indirect exploitation*, where C exploits B in the represent of A, satisfies (iii) because to hire C as the representative is a way to perform A's superior agency. Thus, the Relational condition claims that exploitation is a relational notion in the fundamental sense that it involves A's using her relatively stronger agency, compared to B's agency, to extract wrongful gains from their transaction.

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<sup>51</sup> The case is taken from Nicholas Vrousalis (2013).

<sup>52</sup> I take a broad understanding of what an interaction is. An interaction may take place where we need to negotiate with one another so as to distribute benefits and burdens. Thus, an interaction may occur in a variety of social relationships, such as marriage, market exchange, or work organisation.

In summary, the Relation condition claims that A exploits B only if A takes advantage of B's weaker agency, compared to A's agency. Now the condition can be further elaborated. A exploits B only if A is able to provide a better, but neither fair nor respectful, deal to B than the opportunity set available to B prior to A's offer. In adopting the comparative notion of agency to evaluate who enjoys advantages in an interaction, my account can identify multiple forms of exploitation within a variety of social relationships. We should note that since the Relational condition is necessary for my account of exploitation, disrespectful exploitation is no exception. Compared with unfair exploitation, what is special in disrespectful exploitation is that it violates the Merely Means Principle that we ought not to treat people as merely a mean, and, therefore, A is not morally entitled to any profits, gained from the disrespectful transaction with B. However, the exploiter in disrespectful exploitation still has to be able to provide an exploitative offer that is better than the exploitee's existing options. Hence, the Relational condition serves as a necessary condition of my account of exploitation.

In what follows, I present four alternatives of advantage-taking behaviour and, therefore, four objections to the Relational condition. These are *Roemer's purely distributive approach*, *the Historical approach* (suffering from past injustice), *the Non-Comparative approach* (vulnerability as insufficiency of basic needs) and *the Complex approach* (exploitation as domination). However, I shall argue that they all are flawed. Let us examine each approach in sequence.

#### **4.2. Objection 1: Exploitation Does not Need A Causal Component Between Parties**

The first alternative account, proposed by Roemer, contends that to identify exploitation, we do not need a causal component between parties. However, I reject Roemer's purely

distributive account of exploitation by illustrating that we need a causal component to distinguish exploitation from other kinds of wrongdoing and distributive injustice.

#### 4.2.1. John Roemer's Account of Exploitation

Roemer's understanding of capitalist exploitation is based on property relations. For him, *capitalist exploitation* is “a systematic expropriation of surplus value” that stems from the concentration of the private ownership of the means of production (Roemer, 1982b: 254). The concentration of private ownership divides human society into two main classes: capitalists and labourers. Since labourers are propertyless, they have to work for capitalists to access productive assets — only through labour can they engage in socially productive activities and receive rewards for their efforts. In brief, it is the capitalist property relation — the unequal distribution of the means of production — that enables the appropriation of surplus value of labourers by capitalists. Thus, the ability to own productive assets by themselves always comes as a benefit to labourers. However, although Roemer's account of capitalist exploitation appears to take a relational form, his general account of exploitation is purely distributive.

On his general account, Roemer argues that “A coalition  $S$ , in a larger society  $N$ , is exploited if and only if”:

- (1) “There is an alternative, which we may conceive of as hypothetically feasible, in which  $S$  would be better off than in its present situation.”
- (2) “Under this alternative, the complement to  $S$ , the coalition  $N-S=S'$ , would be worse off than at present.” (1982a: 194)

According to his formulation, if a coalition is exploited, its members would be better off in a hypothetically feasible alternative than the present situation. For instance, whether the

serf coalition is exploited under feudal society depends on whether the serfs would be better off when they form an autarky society. For Roemer, what kinds of resource or endowments that the coalition *S* can bring with them are determined by the social rule of their society. According to Roemer, the social rule of feudal society is that “the coalition can take with it its own endowments” (Roemer, 1982a: 199). Thus, if the serf coalition is better off when forms an autarky society with their own endowments, and if the non-serf coalition would become worse off when forms an autarky society without serfs, then serfs are feudally exploited in Roemer’s view. His general account can be applied to a capitalist or socialist society as well to test whether a social group is exploited (Roemer, 1982a: 202–216).

For Marxists, Roemer’s account has intuitive appeal, because it provides a structural account of how labourers in capitalist society are exploited: part of labourers’ surplus value is taken by capitalists; and if those surplus values were consumed by labourers themselves, (1) labourers would plausibly be better off than are in a capitalist society, and (2) the capitalists worse-off. As such, Roemer’s account is not relational in that whether *B* is exploited does not depend on *A*’s behaviour (Wolff, 1999: 106). On this account, to check whether a coalition is being exploited, we do not need to know which social group enjoys advantages in the asymmetrical relationship or whether the advantageous group presses its advantage upon the disadvantageous group to extract wrongful gains. Nor need we check whether the terms of a transaction are fair or unfair to perceive exploitation. Rather, to identify exploitation, we only need to know whether a group of people would be better off in a hypothetical alternative than in the status quo. In brief, for Roemer, the question — *who* takes advantage of *whom* — is irrelevant to identify exploitation. Hence, Roemer’s general account of exploitation is purely distributive.

Nonetheless, Roemer does remark on the temptation to add a causal component, but he does not follow that temptation. There is a third condition in his general account of



exploitation: (3) “S’ is in a relationship of dominance to S” (1982a: 185). (3) is clearly irreducible to (1) and (2). However, Roemer claims, “the game-theoretic conditions (1) and (2) are sufficient to characterize exploitation” (1982a: 237). And “since dominance is undefined, and is as elusive a concept as exploitation, the addition of (3) is ad hoc” (Roemer, 1982b: fn.15). In later work, Roemer adds that “domination at the point of production, so often a concern of Marxism, is quite distantly related to the concern with exploitation” (1988: 107). Roemer then appears to suggest that dominance is not a necessary condition of capitalist exploitation. If dominance is unnecessary for capitalist exploitation, it would not be necessary for exploitation in general. Hence, all these suggest that, for Roemer, to identify exploitation, no causal story between the exploiter and the exploitee is necessary.

#### **4.2.2. A Causal Component is Necessary for Exploitation**

Roemer’s account has two *prima facie* defects. The first is that it fails to properly identify the exploitative interaction between the exploiter and the exploited. As Elster (1982: 370) indicates, even if A is an exploiter and B is exploited, it does not follow from this the relation that A exploits B. We need further information to establish the exploitative relationship, such that A takes advantage of B. Roemer’s account identifies who is an exploiter and who is exploited, but, oddly, we do not know, for example, whether capitalists exploit labourers, which is of crucial to our understanding of capitalist exploitation. The second is that it is unable to explain exploitation between individuals because we do not know whether A exploits B. If so, we do not know how to eliminate exploitation and who is particularly liable for exploitation.

The above two defects, however, need not erode the foundation of Roemer’s account since he could acknowledge that his account is designed for exploitation between classes,

but not between individuals. Nevertheless, there are two further reasons to support the necessity of including a causal component for exploitation. Consider the conceptual reason first. The minimum requirement that any account of exploitation should satisfy is that it should be able to distinguish exploitation from other kinds of wrongdoing, e.g., theft and robbery, and, more importantly, an unjust distribution of resources. Exploitation is significantly differentiated from distributive injustice. While exploitation involves A, individually or collectively, extracting benefits from B, individually or collectively, in virtue of A's advantage against B, distributive injustice does not need to make reference to a specific relationship between parties. For instance, some argue that there is distributive injustice if C has more opportunity than D, which can be caused by the way the non-agential world is. As Wollner (2019: 146) indicates, an account of exploitation is unconvincing if it fails to distinguish between exploitative and non-exploitative transactions. Besides, exploitation is not theft or robbery in that while exploitation, in general, is neither violent nor involuntary, a robber uses violence to grab valuable things, and theft is against the victim's violation. Also, people may be better off than before after an exploitative offer, but they are worse off than before after theft or robbery.

Roemer's general account, however, seems unable to provide such an important conceptual distinction. This is because a coalition of victims would be better off in withdrawing from a situation of theft, say; and perpetrators would be (materially) worse off if victims withdrew. Moreover, his account conflates exploitation with distributive injustice, which actually are two distinct concepts. A coalition S could be better off in a hypothetical situation, either because they suffer distributive injustice, or because they are exploited. For example, suppose a coalition F suffers an unequal opportunity of education in society N. F will be better off in an ideal society N' where everyone has an equal educational opportunity. When F withdraws from N, the rest of people will be worse off because they lose the labours and talents of F. This is a case of distributive injustice that

meets Roemer's conditions, but actually does not involve exploitation. However, since in his account, no such a reference point to A's behaviour is required to identify exploitation, we do not know whether the coalition S suffers exploitation or other kinds of wrongdoing. As Elster indicates, causal components are a constituent of exploitation (1982: 366). The conceptual reason suggests that A's advantage-taking behaviour is a necessary reference point for identifying exploitation. Without an appropriate causal component that discriminates between similar notions, it is difficult, if not impossible, to distinguish exploitation from other wrongs that harm victims and benefit perpetrators. Hence, a causal component is necessary for identifying exploitation. This is the conceptual reason.

Now consider the empirical reason. An account of exploitation needs a causal component just because we can hardly imagine how the exploiter can extract wrongful benefits from the exploitee without the exploiter's enjoying advantages in their asymmetrical relationship. In other words, people would not normally accept an explicitly unfair deal unless they are disadvantageous in a transaction. Consider a case in which A and B have no actual interaction in any respect. They do not know each other, not to mention communicating or interacting with each other. One day, B voluntarily and randomly transfers one million pounds to a bank account for fun and, luckily, it is A's account. Some might think that the case is exploitative because their transaction yields unequal flows between them. However, since A's transaction to B is fully voluntary and no actual, asymmetrical interaction occurs between them, even if the transaction is unequal and, *pro tanto*, unfair, it is not exploitation in any sense. The unequal exchange might be a necessary condition of exploitation, but it is not sufficient for exploitation. Rather, most would regard the transaction as a gift. Unequal exchanges are common in human society, e.g., gifts between friends or pocket money that parents give to their children. The unequal exchange would not be a problem and might even be encouraged. To identify exploitation, one cannot assess the outcome of a transaction alone; we need to know their relative

positions in an asymmetrical relationship.

Nonetheless, it might be argued that exploitation can be distinguished from gifting by reference to other non-causal factors. Indeed, even if some exchanges are unequal, the reason that they are widely appraised by society is that they are reciprocal in nature, but not because they lack appropriate causes. Furthermore, as some argue, unequal transactions between capitalists and labourers are exploitative just because they are *non-reciprocal* (See Vrousalis, 2018: 4-5; Warren, 1994; Arneson, 2013: 396-398; Bertram, 2009: 151-153; Risse & Wollner, 2019: 81-82). The reciprocal view, however, is misleading. Non-reciprocal behaviours are not necessarily exploitative. Some forms of gifts, theft, and robbery are non-reciprocal, but, as I have indicated, they are not exploitation. A violation of reciprocity cannot, in itself, distinguish exploitation from other similar wrongdoings. We need a causal component for identifying exploitation.

In sum, exploitation must involve an asymmetrical relationship between the exploiter and the exploited, not only because A can exploit B only if a causal interaction occurs between them, but because we can only distinguish exploitation from other kinds of wrongful gain by differentiating A's behaviours. So much for the need for a causal component. A proper distinction, as I have argued, cannot be grounded on a distributive outcome, *per se*, a causal component is required. Hence, for both conceptual and empirical reasons, exploitation must involve a causal component.

#### **4.3. Objection 2: Exploitation Must Stem from Background Injustice**

In the following three sections, I examine three accounts of what a causal component should look like and argue that all of them are too restrictive to serve as a necessary condition of exploitation. The second objection to the Relational condition, then, argues that exploitation must stem from a past injustice. More precisely, the asymmetrical

relationship that makes the exploited disadvantageous, is caused by a prior injustice. Therefore, an account of exploitation can take a *historical* or an *ahistorical* form. The historical form holds that a past injustice is necessary for exploitation, while the ahistorical form insists that we can identify exploitation regardless of its unjust history. This section then examines and objects particularly to Steiner's historical account of exploitation. Steiner offers a *historical* account: a prior injustice is necessary for exploitation and prior injustice of the right kind is sufficient. Contra Steiner, I argue that exploitation may occur even if neither party suffers background injustice. I claim that; first, exploitation is essentially ahistorical even though, very often, it may stem from background injustice; second, if exploitation need not have an unjust cause, we cannot distinguish between permissible and impermissible advantage-taking behaviours wholly by reference to the distinction between fair and unfair advantages.<sup>53</sup>

#### 4.3.1. Hillel Steiner's Account of Exploitation: Suffering from Past Injustice

According to Steiner, exploitation only occurs if the seller of X could have obtained more profits had a past violation of moral rights that reduces the price of X been absent (2017: 436-437). Steiner's account is similar to Roemer's in that whether one is exploited has to be compared with a counter-factual situation, in which the seller could have obtained more profits. Note that both the seller of X and a third party who fails to outbid the winner of X for some relevant reasons could be exploited (Steiner, 2010: 27, 1987: 146, 1984). The underselling of X is exploitative only if it results from a past injustice that either prevented a third party from outbidding the buyer of X or made the seller of X unable to set a higher reservation price (Steiner, 2017: 440, 2018: 4). Although many factors could have prevented

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<sup>53</sup> This would form the main argument in Chapter 6. I shall fully explore its implication later on.

the seller from receiving more profits, only some are relevant. For instance, neither a person's changing preferences nor the objective cost of X can serve as a relevant reason for a charge of exploitation. This is either because since Steiner adopts a liberal account of exploitation, liberals should remain neutral among rival conceptions of good and take one's preferences as given, or because, for liberals, the price of X "is worth no more than the maximum bid that would be made for it in an auction" (Steiner, 2010: 23, 2013: 336). In either case, the change in X's price would not count as exploitation.

However, *how* does a past injustice lead, causally, to exploitation? To illustrate Steiner's answer, consider a case of an auction, in which Blue is selling X, and Allen and White bid for X.<sup>54</sup> Suppose that Allen wins the bid at £100, and White loses. The final price of X is £100. Steiner claims that exploitation could occur in two ways. One is that, although White is willing to outbid Allen, White is unable to do so due to a violation of her moral rights. For instance, before attending the auction, White was robbed of £50. A robbery is a violation of White's moral rights, which makes her unable to outbid Red. Another possibility is that a rights violation lowers Blue's reservation price for X: for example, Blue is robbed, and because of that, he desperately needs a certain amount of money. In either case, Allen exploits Blue, since Blue could have received a higher bid had White or himself not suffered from a rights violation (Steiner, 2017: 439).

Moreover, for Steiner, a past injustice refers to a violation of one's moral, but not legal, rights (2018: 5). What counts as moral rights differ among theories of justice, and Steiner remains open that a variety of rights violations could explain why X was unjustly undersold to the winner of the bid (2017: 439). The causal component in Steiner's account, thus, is "the effect of a rights violation" that reduces the victim's endowment, which Steiner called "an endowment-reduction" (2018: 3-4). Since White obtains a set of rights,

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<sup>54</sup> The case is taken from Steiner, but it is slightly different.

White's endowment is defined as "[t]he aggregate economic value of these rights" (Steiner, 2017: 439). When one's endowment is reduced, it means "a reduction of his set of feasible options" and her ability to purchase declines, even if her preferences remain stable (*ibid.*).

More specifically, two situations should be further distinguished: *state-imposed restriction* and *endowment-reduction*. Forms of state-imposed restriction concern the issue of unfree markets; in contrast, one's endowment-reduction concerns the issue of free markets. If the reason why White refrains from outbidding Allen or attending an auction is due to state-imposed restrictions, then Allen exploits Blue. For instance, White might be prohibited from attending an auction because of some reasons for exclusion: her age, gender, membership, or religious tendency. In some cases, these exclusive rules could be justified, which depends on what X is and the relevance of reasons. However, for Steiner, even if these rules could be plausibly justified, "the exploitative effect of these rules is plain" in unfree markets (2017: 437). This is because Allen, the exploiter, could have obtained more economic values of X in unfree markets. The effect of state-imposed restriction leads to exploitation. In contrast, concerning endowment-reduction, it is always about one's moral rights that have been infringed without involving a state-imposed restriction. Whether or not White's prohibition of outbidding Allen's bid causes exploitation depends on whether White's moral rights have been violated, and thus whether White's endowment has been reduced. So, for instance, if the reason that makes White unable to outbid Allen is *because of her own faults*, Allen does not exploit Blue. Hence, a violation of moral rights is necessary for exploitation.

Now Steiner's account of exploitation is *historical* in two fundamental senses. One is that a past injustice — understood as a rights violation — is a necessary causal component of exploitation. That is, Allen obtains more advantages in the asymmetrical relationship due to a right violation done to Blue or White. Another is that "exploitations can compound" (Steiner, 2017: 440). Since a rights violation results in exploitation, exploitation

will generate further endowment reductions in turn and thereby, more exploitation. As a result, “These *chains of exploitation*, which can extend over generations and centuries, all have their origins in rights violations but, thereafter, those exploitations can become self-reproducing” (ibid.). As such, each exploitation stems from a rights violation, but exploitation will generate further endowment reductions, which lead to further exploitation. The necessity of past injustice and the reproduction of exploitation make Steiner’s account historical in character.

#### 4.3.2. A Past Injustice is Not Necessary for Exploitation

My objection to Steiner’s account is that a past injustice—broadly construed—is not a necessary condition of exploitation.<sup>55</sup> More precisely, the exploiter’s advantage in the asymmetrical relationship need not stem from background injustice done to the exploited. Consider *Greedy Mountain Rescuer*.

*Greedy Mountain Rescuer*. Bob is a millionaire who enjoys nature and loves to climb alone. Allen is a millionaire who loves hunting. One day, Bob is stranded in the mountain; luckily, Allen roams the mountain and offers to rescue Bob for an exorbitant price, say, ten times than the average cost of a rescue by National rescue team. Bob accepts the deal, and Allen exploits Bob.

*Greedy Mountain Rescuer* is a paradigmatic case of exploitation. Allen exploits Bob since Allen takes advantage of Bob’s adverse situation to gain unfair benefits. However, in *Mountain Rescuer*, it is clear that Bob’s being stranded in the mountain is his own fault since Bob does not take the risks of climbing alone seriously. The case, therefore, illustrates that it is possible to come with an exploitative case in which no prior injustice involves or

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<sup>55</sup> For a critique of Steiner’s account, see Steven Walt (1984) and Christopher Bertram (1988).



results in exploitation. Surely, Bob's adverse circumstance could be caused by a past injustice, say, the government unfairly assigns him a house on the hill, and he is not allowed to live in elsewhere. Such an unjust allocation constitutes a form of involuntary disadvantage, which results in Bob's being exploited by Allen. However, as Vrousalis puts it, it is possible that Bob finds himself stranded in the mountain "through just steps, from a just starting position" (2013: 149). The crucial point at stake is that exploitation can nevertheless occur even if it starts from a just initial distribution and reaches its exploitative contract through just steps. That is to say, A's advantage against B in their asymmetrical relationship may come from just background condition. Hence, a past injustice is not necessary for exploitation (Miller, 1990: 182), and exploitation need not be historical in that respect.

If a past injustice is not necessary for exploitation in the sense that A's superior position than B need not stem from a prior injustice, exploitation is fundamentally ahistorical in character. Exploitation is ahistorical in the sense that an exploitative outcome results *primarily* from "the properties of the present transaction" (Ferguson & Steiner, 2018: 536), but not that of background injustice. More significantly, A exploits B only if A presses her advantage upon B in the asymmetrical relationship to extract wrongful benefits, regardless of whether A's advantage or B's disadvantage is fair or unfair according to a principle of justice. If this is correct, it would be misleading to identify exploitation with reference to the distinction between fair and unfair advantage-taking behaviour. I will return to this point in Chapter 6. The rejection of Steiner's historical account, however, does not show that background injustice has no relevance at all. Rather, it would be productive to inquire about the proper role of background conditions played in exploitation since it connects to the relationship between exploitation and egalitarian justice. Without clarifying the proper role of background conditions, the discussion of the injustice of exploitation can hardly proceed.

### 4.3.3. The Relationship Between Exploitation and Background Injustice

Even if background injustice is not necessary for exploitation, one might wonder what their proper relationship is? As Wertheimer correctly indicates, “agreements are not unjust or exploitative simply because they arise out of unjust background conditions” (1996: 298). For him, an agreement cannot be exploitative because of background injustices, *per se*; it must involve, at least, the unfairness of a transaction. For instance, it is not exploitation when a lawyer takes advantage of her customers’ unjust situations to gain *fair* benefits. Hence, background injustice is not necessary to identify particular transactions as exploitative, nor are they sufficient (Zwolinski, 2012: 171-172; Valdman, 2008).<sup>56</sup> But what relationship then does background injustice have to exploitation?

Background injustice, though it is not a conceptual constituent of exploitation, might play an explanatory role of the exploiter’s advantage, or the exploitee’s disadvantage, in practices. In real-world cases, such as sweatshop exploitation or exploitation between social groups, structural injustice, broadly construed, forms multiple unequal social relations where exploitation may occur. In other words, structural injustice provides a breeding ground for exploitation in our world. What then, is the implication of the perplexing connection between exploitation and structural injustice? I would say that one cannot eliminate exploitation without correcting structural injustice as well if the point is to change the world as Marx (1969a) points out in *Theses on Feuerbach*. Then, merely demanding a fair transaction would be conservative; rather, a radical solution is to rectify structural injustice together. It was like when Marx discussed exploitation in wage labour, he indicates:

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<sup>56</sup> See Valdman (2008) for his argument that injustice is neither necessary, nor sufficient, nor an important component, for exploitation.

Instead of the *conservative* motto: “*A fair day’s wage for a fair day’s work!*” they [workers] ought to inscribe on their banner the *revolutionary* watchword: “*Abolition of the wages system!*” (Marx, 1969: 29, his italic)

Note that Marx does not claim that we ought not to demand a fair wage from the exploiter. Rather, his point is that we ought to rectify the wages system — understood as a form of structural injustice because of the maldistribution of productive assets — that enables capitalist exploitation. Yet, although exploitation may occur where there is an asymmetrical relationship, and it is undesirable and impossible, to eliminate all kinds of asymmetrical relationship, to correct structural injustice will help to eliminate most exploitation. Hence, structural injustice, though it is not necessary for exploitation, is where the action is.

In sum, exploitation need not stem from past injustice, and exploitation is conceptually ahistorical in character. Having denied Steiner’s historical account of exploitation, in the rest two sections, I examine two alternatives of the ahistorical account of exploitation: *Non-Comparative* and *Complex* view and argue that both are not necessary for exploitation.

#### **4.4. Objection 3: Exploitation Occurs Because of The Exploitee’s Absolute Condition**

The Non-Comparative view argues that exploitation occurs when someone A takes advantage of B’s absolute, rather than comparative, condition. Note that the Non-Comparative view can take a historical form. That is, it might hold that if the A’s absolute feature is self-caused, then someone who takes advantage of A’s absolute deprivation does not exploit A. However, since I have rejected the Historical view, the historical version of the Non-Comparative view is implausible for the same reason. Thus, I focus on the ahistorical version of it. My conclusion is that the Non-Comparative view is too narrow

to be necessary for exploitation.

#### 4.4.1. Non-Comparative: Vulnerability as Insufficiency of The Exploitee's Basic Needs

With respect to exploitation, most tend to link exploitation with the notion of vulnerability (Wolff, 1999; Wood, 1995; Goodin, 1987; Liberto, 2014) or of insufficiency of basic needs (Sample, 2003; Snyder, 2008). The trend is unsurprising since the conventional image of the exploited appears to be of the vulnerable or those below a threshold of basic needs. Here I focus on the non-relational approach, which holds that the exploitee is vulnerable because her basic needs are unsatisfied. Call this *Basic need-based view of vulnerability*. For this view, it is the exploitee's insufficiency of basic needs — B's absolute feature — that makes the exploiter advantageous in their asymmetrical relationship. Therefore, the view is *non-comparative* in the sense that to identify exploitation, it is the exploitee's *absolute* character on which we should focus exclusively without reference to the information of the exploiter.<sup>57</sup> And the view is ahistorical in that A takes advantage of B's vulnerability to gain benefits, A exploits B, irrespective of whether B's vulnerability is caused by her own or by uncontrolled factors. Hence, the Non-Comparative view offers an ahistorical account to explain why the exploitee is in an inferior position in the asymmetrical relationship.

Note that theorists may differ in their notion of basic needs, but this would not affect the claim that it is B's absolute level of advantage that gives A a superior position in their relationship. As I have introduced in Chapter 3, Sample, among others, is one prominent advocate of the view, and she follows Sen's (2001) and Nussbaum's (2000) capability

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<sup>57</sup> Note that I do not mean to suggest that the vulnerability view must adopt a non-comparative form, but only take the basic need-based view of vulnerability as a distinctive case to specify why, in order to identify exploitation, an account should not focus exclusively on the absolute character of the exploitee. For a comparative, relational notion of vulnerability, see Vrousalis (2013).

approach in defining her criterion of exploitation. The capabilities approach emphasises that what matters is whether citizens can turn resources into capabilities. Even if people receive an equal amount of resources, if the resources cannot guarantee that they can all achieve a basic level of functioning, it is unjust.

Nonetheless, Sample does not really offer a basic-needs-based account of exploitation, but only suggests that, we should take another's basic needs seriously when distributing resources to avoid exploitation. Her view is not an account of exploitation because Sample does not claim that whenever a distribution is equal in terms of capabilities, exploitation ceases. Rather, what she demands is simply to treat another's basic needs seriously when acting. Sample's view, however, is too vague to advance our understanding of exploitation any further (Snyder, 2008: 394). To take one's basic needs into consideration does not provide any account of exploitation. Snyder, instead, develops Sample's view further and provides a more accurate account of the basic-needs-based account of exploitation.

Snyder holds that A exploits B if A takes advantage of "the needs of a vulnerable person" (Snyder, 2013: 348) – that is, A uses B's worse situation caused by B's lack of basic needs to gain benefits. Snyder's view is ahistorical in the sense that whenever B's insufficiency of basic needs is taken advantage of, it constitutes exploitation, regardless of the cause of one's insufficiency of basic needs. Moreover, Snyder's account is non-comparative just because one's basic needs are independent of another's, which is the *absolute* character of the purported exploited. As such, for the Non-Comparative view, we can identify exploitation without reference to the character of the exploiter. Moreover, we should note that Snyder holds the process-focused view that taking advantage of B's inferiority to gain benefits, constitutes disrespectful exploitation, that is, all of the exploiter's gains are morally unjustified. However, my focus is not on whether taking advantage of B's insufficiency of basic needs may or may not constitute exploitation.

Rather, I aim to examine the ahistorical account that Snyder implicitly endorses to explain why the exploitee is disadvantageous in the asymmetrical relationship, is true or not, and whether B's disadvantage in an exploitative relationship is always caused by B's absolute feature — namely, the basic need-based view of vulnerability.

#### 4.4.2. The Defect of The Non-Comparative View

The major defect of the Non-Comparative view is that B's disadvantage in an asymmetrical relationship need not be caused by B's absolute condition. Exploitation may occur between billionaires, whose basic needs are satisfied. For example, when Warren Buffett desperately wants Picasso's paintings, other billionaires who have the paintings can exploit Buffett. In this case, Buffett's inferior bargaining position in the transactions with potential sellers is not caused by his insufficiency of basic needs but caused by his preferences. The case illustrates that exploitation may occur between people whose basic needs are satisfied and who are not vulnerable in that sense. Thus, although in some cases, people are exploited because their basic needs are not satisfied, this is not always the case. B's disadvantage in the asymmetrical relationship with A may be caused by some other reasons. My rejection of the Non-Comparative view implies that even in a sufficientarian society where people's basic needs are satisfied, exploitation may still occur. Hence, the Non-Comparative view is too restrictive to include other significant forms of exploitation and, for that reason, fails to serve as a necessary condition of exploitation in general.

As the Relational condition suggests, exploitation is a *relational* notion in the fundamental sense that whether A will obtain advantages in a transaction depends on whom she interacts with. One's (dis)advantage in interaction is always relative to her interactor(s), but not in an absolute term. Therefore, we need to specify “who does what to whom” (Geuss, 2008: 23-26) to assess who obtains advantages and therefore, who

exploits. To focus exclusively on either the exploiter's absolute advantage or the exploitee's absolute disadvantage, cannot explain the asymmetrical relationship in general. We must take the interaction between parties into account. The Non-Comparative view gives the incorrect impression that the exploited are those whose basic needs are unsatisfied. Hence, the Relational condition is more plausible than the Non-Comparative view in that it can identify more exploitation than the Non-Comparative view by employing the comparative, rather than absolute, notion of agency.

#### **4.5. Objection 4: Exploitation as Domination (The Complex View)**

Unlike the Non-Comparative view, some theorists propose a comparative, ahistorical notion of the causal component to identify who is an exploiter and who is exploited in an asymmetrical relationship. However, their accounts face the same defect as the Non-Comparative view, that is, they are too restrictive to serve as a necessary condition of exploitation in general. In this section, I introduce and criticise Vrousalis's account in particular,<sup>58</sup> who proposes exploitation as domination.

##### **4.5.1. Exploitation as Domination**

Vrousalis's account characterises the Complex view, which argues that the asymmetrical relationship that makes exploitation possible involves domination between parties. Although Roemer has initiated the potential connection between exploitation and domination, he rejects the necessary connection between exploitation and domination. Nonetheless, Vrousalis develops the idea of exploitation as domination to a great extent.

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<sup>58</sup> Risse and Wollner's exploitation as unfairness through power is another example of the Complex view. The exploiter is able to extract unfair benefits from the exploitee by exercising power (Risse & Wollner, 2019: 88-93). However, given the limited space, I am not able to discuss their account.

His overall sketch could be divided into two parts: first, he proposes a way to formulate exploitation and second, explains why his formulation of exploitation is a form of domination. I shall introduce the two parts in sequence and explain why his account characterises a form of the Complex view. His general account of exploitation is as follows:

A exploits B “if and only if A and B are embedded in a systematic relationship in which (a) A instrumentalizes (b) B’s vulnerability (c) to extract a net benefit from B” (Vrousalis, 2013: 132).

The causal components in his account are (a) and (b), so I shall leave (c) aside.<sup>59</sup> Regarding (a), for Vrousalis, to instrumentalize S means “S is being used as a means” (2013: 132). Rather than adopting the common formulation — taking advantage of — Vrousalis uses the term ‘instrumentalize’ as an alternative to interpret exploitation. Now consider (b). Vrousalis distinguishes between absolute and relational vulnerability and argues that it is the latter that is associated with other agents. Accordingly, “B is relationally vulnerable to A only when A has some sort of power over B” (Vrousalis, 2013: 133). Moreover, Vrousalis explicitly limits his notion of vulnerability to economic spheres, in which “B is economically vulnerable to A if and only if B is vulnerable in virtue of B’s position relative to A in the relation of production” (2013: 136). The reason that Vrousalis focuses *exclusively* on economic vulnerability is that “certain (noneconomic) forms of vulnerability.....are constitutive of intrinsically good relationships” (2013: 135). In those cases, it is undesirable and impossible to remove them. Economic vulnerability, by contrast, is different and not an element of reciprocal relationships.

Therefore, one is economically vulnerable only when one is situated in a relatively disadvantageous position in a productive relationship. A production relationship concerns

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<sup>59</sup> Vrousalis gives a very brief explanation of (c): “A benefits just when there is an increase in A’s well-being. A obtains a net benefit when A’s *overall* well-being increases” (2013: 135, his italics).



property relation in which people's relative positions represent their systematic relations of power. The instrumentalisation of one's economic vulnerability, thus, belongs to a form of power relations. In brief, Vrousalis's account of *economic exploitation* consists of two claims:

A economically exploits B “if and only if A and B are embedded in a systematic relationship in which (d) A instrumentalizes B's economic vulnerability (e) to appropriate (the fruits of) B's labor” (2013: 138).<sup>60</sup>

Nonetheless, Vrousalis can claim that exploitation is a form of domination only when he provides a notion of domination. Now let us turn to Vrousalis's account of domination. According to Vrousalis,

A dominates B “if A and B are embedded in a systematic relationship in which (f) A takes advantage of his power over B, or the power of a coalition of agents A belongs to, in a way that is (g) disrespectful to B” (2013: 139).<sup>61</sup>

Now, for Vrousalis, exploitation implies domination just because “(d) and (e) jointly imply (f) and (g)” (2013: 140). More specifically, in my view, what actually makes his inference plausible is primarily because (d) is a subset of (f) — that is, A's instrumentalising B's economic vulnerability is a form of A's taking advantage of his power over B. So, I shall leave (e) and (g) aside. Hence, exploitation is a form of domination because to instrumentalise B's economic vulnerability is to take advantage of one's power over B. If the inference is plausible, then exploitation implies domination.

Vrousalis's account, thus, represents a way to characterise *the Complex view*. His account is ahistorical in that whenever A instrumentalises B's economic vulnerability to gain

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<sup>60</sup> Once again, since (e) does not concern the causal component of exploitation, I leave it aside.

<sup>61</sup> Again, since the element (g) concerns the moral wrongness of exploitation, which is not my focus here, I shall leave it aside.

benefits, A exploits B, disregarding how B's economic vulnerability comes about. His account takes a relational form in that whether one obtains economic vulnerability in structures depends on one's relative position to others in systematic relations of production. Therefore, for Vrousalis, the asymmetrical relationship where A presses her advantage upon B is a form of social domination. Besides, exploitation as domination represents the complex view in that one connects the concept of exploitation with other similar concepts, such as domination and coercion, to define the nature, or the wrongness, of exploitation. Having introduced the Complex view, I then criticise it.

#### 4.5.2. A Critique of The Complex View

Vrousalis's account has two major defects. It is either too narrow to include some non-domination cases of exploitation, or too broad to distinguish exploitation from other permissible conducts. Consider the too-narrow defect first. Domination is not a necessary condition of exploitation in general. For Vrousalis, to regard exploitation as domination, it is necessary that A and B must be embedded in a systematic relationship (2013: 132, 2018: 2). For him, a systematic (or social) relationship is defined as "any relationship between two agents representable as a relational predicated in a true and complete social science" (Vrousalis, 2018: 2). However, very often, exploitation occurs even if both A and B are not embedded in any systematic relationship. For instance, in my case of *Greedy Mountain Rescuer*, Allen exploits Bob, but they are not embedded in any relationship that would be regarded as systematic by social sciences. To rescue a person in a mountain is an occasional event without being embedded in a systematic relationship. Hence, my first objection, as regards the too-narrow issue, to Vrousalis's account is that domination is not a necessary condition of exploitation in general.

Now consider the too-broad defect. Vrousalis's general account of exploitation is too

broad to distinguish exploitation from other permissible conducts. The objection is offered by Arneson, who invites us to consider a case:

***Cancer Treatment.*** I live in an isolated rural region, in a region in which health care insurance is unavailable. There is only one qualified surgeon in the territory. After a routine check-up she informs me that I have a cancer that will swiftly kill me unless surgery is done. Only she can do the surgery. I'd be willing to give everything I own in exchange for the needed surgery, but the actual price she charges is modest, better than fair. This is business as usual for the surgeon. She makes her living by striking bargains like this with people in conditions like me. She makes a good living. (Arneson, 2016: 10)

*Cancer Treatment* fits with Vrousalis's general account of exploitation. Both the doctor and the patient in the case are embedded in a systematic relationship — the doctor-patient relationship. The patient is relationally vulnerable to the doctor just because she is the only qualified doctor in the region. Moreover, note that since the doctor makes use of the patient's vulnerability to extract *net* benefits from the patient,<sup>62</sup> Vrousalis's account of exploitation is a form of disrespectful exploitation in that A's profits, gained from a disrespectful transaction — in Vrousalis's view, dominant relationship, are morally unjustified. Hence, the doctor exploits the patient, regardless of whether or not the terms of the treatment are fair or unfair.

One will find the conclusion counter-intuitive since we tend to think that the doctor helps her patients and does not exploit them in a disrespectful way. The fundamental defect of Vrousalis's account is that his account is actually *a domination-based account of disrespectful exploitation*, but he fails to note the possibility of *a domination-based account of unfair exploitation*. In other words, he conflates the permissible and impermissible instrumentalisation of another's relational vulnerability, which leads to two forms of exploitation. Since his domination-based account of disrespectful exploitation is conflated with unfair

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<sup>62</sup> By "net" benefits, Vrousalis refers to the increase of one's overall well-being (2013: 135).

exploitation, Vrousalis's account is vulnerable to cases, such as *Cancer Treatment*, where the relationship involves social domination but does not violate the Merely Means Principle that we ought not to treat people merely as a means. In *Cancer Treatment*, once the terms of their transaction are fair relative to a fairness baseline, no exploitation occurs. The instrumentalisation of another's relational vulnerability to extract *net* benefits is not always disrespectful and would not constitute exploitation if the terms of such profit-seeking behaviour are fair. Hence, Vrousalis's account of exploitation as domination is too broad to include cases where to seek profits in a dominant relationship does not treat people as merely a means.

#### 4.5.3. Exploitation as Domination: A Further Examination

Now I indicate two elements that make Vrousalis's account too broad in nature. One concerns the element (c): to extract a *net* benefit from B. This makes Vrousalis's account a kind of disrespectful exploitation, as I have called it, in that any of A's gains are morally unjustified. His account is vulnerable to the challenge of *Cancer Treatment* because this case may be a case of unfair exploitation in which the doctor gains unfairly, rather than disrespectful exploitation. When the doctor charges an exorbitant price from her patients relative to a fairness baseline, she exploits her patients. However, since Vrousalis insists that unfairness is not necessary for exploitation (2016: 529), he rejects the possibility of a domination-based account of unfair exploitation, in which we replace "net" in (c) with "unfairness", that is, 'to extract *unfair* benefits from B'. When so revised, we can assess whether the doctor exploits her patients by referring to a fairness baseline. Hence, exploitation as domination takes two different forms.<sup>63</sup>

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<sup>63</sup> Risse and Wollner's account is subject to the same critique. Their power-induced account of exploitation could be further distinguished between disrespectful power-induced exploitation that violates the Merely Means Principle and their ordinary power-induced exploitation that does not. The disrespectful power-

***The First Form:*** A exploits B when A takes advantage of B's inferiority to gain unfairly from the dominant relationship, which does not violate the Merely Means Principle, with B.

***The Second Form:*** A exploits B when A takes advantage of B's inferiority to gain benefits from the dominant relationship, which violates the Merely Means Principle, with B.

Another concerns (d) and (f). Recall that, for Vrousalis, exploitation can be viewed as domination primarily because (d) — A instrumentalizes B's economic vulnerability — implies (f) — A takes advantage of his power over B (or the power of a coalition of agents to which A belongs). In other words, since (d) implies (f) — and (f) is a constituent, and perhaps the most crucial component, of domination, (d) is a form of domination. However, the problem at stake is that (f) does not offer a distinct notion that is irreducible to the notion of exploitation because (f) takes the common formulation of exploitation — taking advantage of. Therefore, (f) is, in fact, a notion of exploitation, rather than domination. Therefore, I doubt whether Vrousalis really fill the gap between exploitation and domination as two distinct concepts.

At least, a conceptual discrepancy between exploitation and domination appears under Philip Pettit's republican account of domination.<sup>64</sup> According to Pettit, any relationships of domination has the following three elements:

- (1) "they have the capacity to interfere"
- (2) "on an arbitrary basis"
- (3) "in certain choices that the other is in a position to make." (Pettit, 1999: 52)

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induced exploitation is conflated in their account.

<sup>64</sup> Pettit's account of domination represents one of the most important accounts. So, I take his account to examine the relationship between exploitation and domination.

In my view, exploitation, in general, is incompatible with (1) and (2). Consider (1). For Pettit, all interfering behaviours involve worsening, not improving another's options (1999: 52-53). However, as I have indicated, an exploitative offer may improve B's status quo by adding an offer better than B's current opportunity set. Hence, exploitation, in general, cannot pass the clause (1). Nor must exploitation in general pass the clause (2). An act is arbitrary, Pettit argues, when "it is chosen or not chosen at the agent's pleasure" (1999: 55). Nonetheless, in voluntary exploitation, the would-be exploited may decide whether or not she should accept or decline the offer. If that is correct, exploitation, in general, is not an arbitrary act in Pettit's definition and therefore, does not pass the clause (2). If exploitation in general, cannot pass both (1) and (2), exploitation is not domination according to Pettit's dominant definition of domination. There is a genuine inconsistency between exploitation and domination.

#### **4.5.4. Why the Relational Condition is more Plausible than the Complex View**

The Relational condition is more plausible than the Complex view just because it avoids the too-narrow and too-broad problem. Since the Relational condition adopts the comparative notion of agency that can identify multiple forms of social interaction, it can widely explain and evaluate the relative position of each party in an interaction, without confining itself to a specific aspect of human relationship, e.g., domination. The Relational condition, then, defines the nature of exploitation without connecting to other similar concepts, such as domination, coercion, and manipulation. On the other hand, the Relational condition avoids the too-broad problem when equipped with two forms of wrongful gain — unfairness and disrespectfulness. Taken together, my account of exploitation will generate two kinds of exploitation according to the distinction between permissible and impermissible profit-seeking behaviours. Also, my account will regard

*Greedy Mountain Rescuer* as exploitation since Allen takes advantage of Bob's weaker agency to extract *unfair* benefits. In contrast, it is doubtful whether or not Vrousalis's account can do so. Consider a variant of *Greedy Mountain Rescuer*, in which Allen will rescue Bob only when Bob gives one pound in return. Since Allen takes advantage of Bob's adverse situation to gain a *net* benefit—one pound, Vrousalis will consider it exploitative. This judgment is implausible. All these suggest that the Relational condition is more plausible than the Complex view.

#### 4.6. Conclusion and A Summary of my Account of Exploitation

I have argued that a causal component is necessary to identify exploitation properly. Moreover, the causal component of exploitation should be ahistorical and relational in character. This is because exploitation does not need to stem from past injustice and the exploitee's insufficiency of basic needs cannot always explain why the exploitee is more disadvantaged than the exploiter. Moreover, I have criticised two main accounts of what the ahistorical component should look like and pointed out that neither the Non-Comparative nor the Complex view is successful. The two views are too restrictive to include some significant forms of exploitation. Instead, the Relational condition, I argue, is more plausible than the alternatives just because the comparative notion of agency can identify who has more agency than whom and, therefore, who exploits whom. The Relational condition is capable of identifying multiple forms of exploitation in a variety of social relationships, where the exploiter obtains more advantages than the exploitee. The Relational condition, then, serves as a necessary condition of exploitation.

It may be helpful to provide a full statement here of the account of exploitation that I have defended in this and the two preceding chapters. My account of exploitation can be summarised as follows:

*A exploits B if and only if (a) A gains wrongfully by (b) taking advantage of B's weaker agency in which (c) B voluntarily engages in a transaction in which with A (or someone, C, who is accountable to A).*

Let us elaborate on each element in turn. Concerning (c), since our focus is mutually beneficial and consensual exploitation, it is important that B has to voluntarily engage in an exploitative transaction with B. However, if our focus is exploitation in general, (c) is not a necessary condition. Moreover, I do not discuss the issue of B's consent to an exploitative transaction because I believe, Wertheimer, among others, has explored the issue at great lengths. He discussed multiple ways of how a defect in B's consent might affect the validity of their transaction and Wertheimer dismissed these worries (1996: 247-277; cf. Feinberg, 1989: ch.22-26). I have no better arguments than his. More importantly, the main reason that we should not dispute the quality of B's consent is that if we can point out the wrongness of 'mutually beneficial and consensual exploitation', then it is much easier to condemn the wrongness of non-consensual exploitation.

Now consider (a). In my view, exploitation consists of two forms of wrongful gains: namely, unfair gain, or disrespectful gain, or both.

***Unfair Gains:*** A gains unfairly relative to a norm of fair distribution

***Disrespectful Gains:*** A gains from a disrespectful transaction with B, one that violates the Merely Means Principle.

To elaborate: unfair gains refer to a situation where a distribution of benefits and burdens between parties in a transaction fails to be consistent with a fairness baseline, and the resulting outcome is unfair to the exploitee. In contrast, disrespectful gains refer to a situation where the exploiter gains from a disrespectful transaction with the exploitee, in



which the exploitee is treated merely as a means. Therefore, the further implication is that the exploiter is not morally entitled to any profits, gained from such disrespectful transactions, because it is morally impermissible to gain benefits by such disrespectful ways. Hence, two forms of wrongful gains—unfairness and disrespectfulness—represent the distributive element of exploitation.

Note that, although unfair gains and disrespectful gains are two distinct forms of wrongful gains, the exploiter may gain *unfairly and also disrespectfully*. Take child labour as an example. In child labour, suppose that the employers treat child labourers as merely a means because they did not take the child labourers' relevant interests seriously and, therefore, the employer gains disrespectfully from the disrespectful employment relationship. However, the employer may gain unfairly because, for instance, the child labourers' wages are unfair relative to a fairness baseline. Consequently, in the case, the employer gains unfairly *and* disrespectfully by taking advantage of the children's desperate situation. The exploiter may gain unfairly and disrespectfully.

Now consider (b). The Relational condition claims that A takes advantage of B's weaker agency, compared to A's agency. The Relational condition has three further conditions:

- (i) ***The Comparative Condition:*** there is an asymmetrical relationship in which A's agency is superior to B's.
- (ii) ***The Sufficiency Condition:*** A's agency has to be strong enough that A is able to address an exploitative offer to B.
- (iii) ***The Unequal Treatment:*** given (i) and (ii), A has to press their superior agency to extract wrongful benefits from their transaction.

The comparative condition states that A's agency has to be comparatively better than B's in their asymmetrical relationship. The sufficiency condition claims that A's agency has to be strong enough that A is able to address an exploitative offer to B, despite that A's agency

is comparatively stronger than B. Furthermore, the unequal treatment suggests that A has to press her comparatively superior, and sufficient, agency upon B to extract wrongful benefits. Otherwise, even if A's agency is more superior than B, and A's agency is stronger enough to address an exploitative offer to B, no exploitation occurs. The Relational condition represents the relational element of exploitation.

To conclude, in my view, A exploits B if and only if A presses her superior agency against B to extract wrongful gains from their transaction. The core idea is that exploitation is a distributive and relational notion in the sense that exploitation consists of (a) — the distributive element, and (b) — the relational element. Therefore, (a), (b), and (c), jointly, constitute mutually advantageous and consensual exploitation.

Overall, my general account of exploitation includes two forms of wrongful exploitation: unfair exploitation and disrespectful exploitation.<sup>65</sup>

***Unfair Exploitation:*** A exploits B if A takes advantage of B's weaker agency, compared to A's, to extract unfair benefits from the transaction with B, relative to a fairness baseline.

***Disrespectful Exploitation:*** A exploits B if A takes advantage of B's weaker agency, compared to A's, to gain benefits from the disrespectful transaction that violates the Merely Means Principle, with B.

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<sup>65</sup> If we focus on volitional exploitation, (c) should be added.

## 5. Distributive and Social Egalitarianism: A Survey

In Part 2 (Chapter 5 and 6), I aim to explore the question: In what way, if any, is exploitation unjust from an egalitarian point of view? The core argument in Part 2 is that the luck egalitarian understanding of the injustice of exploitation is incomplete because exploitation may arise even under background conditions that are just from a luck egalitarian point of view. Therefore, luck egalitarianism is incomplete and needs a principle of non-exploitation to fulfil the deficiency. I will propose such a principle at the end of Chapter 6. Briefly, the principle is that exploitation is unjust on its own, regardless of its unjust history. Before proceeding to the core argument in Chapter 6, I shall first survey the controversy between distributive and social egalitarianism. The survey is necessary because exploitation is inherently an inequalitarian notion. As such, a review of the main controversy between distributive and social egalitarianism will help to facilitate our understanding of the nature of luck egalitarianism and, therefore, how luck egalitarians can plausibly respond to exploitation. Moreover, I claim that luck and social egalitarians should focus more attention on the injustice of exploitation.

Contemporary egalitarians disagree over the best way to understand the ideal of equality. Over the past three decades, luck egalitarianism, among others, has been the most prominent theory of egalitarian justice. Nonetheless, it has also attracted many critiques, particularly those from *social and relational egalitarians*.<sup>66</sup> Social egalitarians criticise distributive egalitarianism in general, and luck egalitarianism in particular, for misinterpreting the idea of equality as a distributive notion.<sup>67</sup> Rather, the idea of equality,

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<sup>66</sup> Elizabeth Anderson (1999) and Samuel Scheffler (2003, 2005) are two prominent social egalitarians.

<sup>67</sup> In the rest of the chapter, 'social egalitarians' refer to both social and relational egalitarians. Although social and relational equality are often treated as similar (if not an identical) notions and people often use them interchangeably, I think that social and relational equality are two distinct notions. In my view, relational equality is a relatively narrow notion that focuses on how individuals treat and regard one another equally; social equality, by contrast, is a broader notion that not only includes the ideal of relational equality but concerns structural inequalities. See Fourie, Schuppert and Wallimann-Helmer (2015: fn.1), and

social egalitarians contend, should best be construed as a social and relational notion. In Chapter 5, I first introduce basic elements of luck and social egalitarianism and then examine three major objections that social egalitarians pose to luck egalitarians, namely, the intrusive objection, the disrespectful objection, and the harshness objection. I will present the responses to these objections that can be made (and in some cases, have been made) by luck egalitarians, demonstrating that these criticisms are not decisive. The social egalitarian critique does not show that luck egalitarianism is not a plausible doctrine of egalitarian justice. Instead, while these critiques are not compelling, my argument in Chapter 6 will show the deficiency of luck egalitarianism. Chapter 5, thus, is a preliminary stage for the core argument in Chapter 6.

The structure of this chapter proceeds as follows. Section 5.1. introduces three elements of luck egalitarianism. Section 5.2. discusses the core ideas of social egalitarianism and how prominent social egalitarians understand the ideal of living as social equals. From section 5.3. to 5.5., I examine three objections in sequence and illustrate how luck egalitarians can plausibly reply to these objections. Section 5.6. is the conclusion.

### **5.1. The Three Basic Elements of Luck Egalitarianism**

The standard formulation of luck egalitarianism states that “It is bad — unfair and unjust — for some be worse off than others [through no fault of choice of their own] (Temkin, 1993: 13). According to this formulation, disadvantages that are caused by bad brute luck, as contrasted with genuine choice are, *pro tanto* unjust and self-caused disadvantages are not unjust. Luck egalitarianism, thus, is a theory of egalitarian justice that, with reference to the luck/choice distinction, addresses the question: when is inequality justice-upsetting

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Schuppert (2015b: 444, fn.9).

and when it is not? As such, it consists of three fundamental elements: its commitment to equality, “anti-luck” and “pro-choicist” (Stemplowska, 2012: 398, 2016: 150-151).

Let us consider ‘anti-luck’ first. Luck egalitarians share an appealing intuition that benefits or burdens that result only from luck are “arbitrary from a moral point of view” (Rawls, 1971: 72). Luck egalitarians are worried about cases where brute luck is unequally shared. For instance, for luck egalitarians, it is not just or deserved that someone suffers a natural disaster while others do not. However, most luck egalitarians would only compensate *brute luck*, not for the bad outcome of all kinds of luck. Brute luck, by definition, “is a matter of how risks fall out that are not in that sense deliberate gambles” (Dworkin, 2002: 73). Since the outcome of bad brute luck cannot be controlled and anticipated by people, it is therefore unfair that people are liable for any outcome of brute luck (Dworkin, 2011: 358-360). On the contrary, luck egalitarians accept the outcome, either bad or good, of *option luck*, which is defined as “a matter of how deliberate and calculated gambles turn out — whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined” (ibid.).<sup>68</sup> Unlike brute luck, the outcomes of option luck are risks that people have deliberately accepted and could have avoided; thus, people should be held responsible for *any* results of the deliberated gamble in which they choose to engage. Luck egalitarians differ in their definitions of what luck means and how to draw the distinction between brute and option luck (Cohen, 2011: 116-123; Hurley, 2003: 107-109; Lippert-Rasmussen, 2016: 55-76), but these differences are orthogonal to my purposes here. The key point to note is that a core goal for luck egalitarians is to *mitigate or neutralise*, the undue influence that bad brute luck brings about on distribution.<sup>69</sup>

Luck egalitarians are “pro-choicist” in the sense those benefits and burdens of ours

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<sup>68</sup> Dworkin, however, refused to recognise himself as a luck egalitarian. See Dworkin (2003).

<sup>69</sup> For the distinction between neutralisation approach and mitigation approach, see Andrew Mason (2006: ch.4 & 6)

that are not a matter of brute luck but are caused by us, are not unjust. In committing to “choicism,” luck egalitarians believe that to some extent human beings are “responsible agents, capable of acting freely in a sense that renders our conduct subject to moral appraisal as blameworthy or commendable” (Williams, 2008: 498). The view seems intuitively appealing to the extent that we think that agents should be treated as liable for what they do, and that part of this involves permitting them both to benefit and to lose out from the choices that they freely pursue. It does appear unfair when a prudent person, who works so hard and make every choice deliberately, has to compensate for the imprudent choices of another. As Arneson indicates,

Distributive justice does not recommend any intervention by society to correct inequalities that arise through the voluntary choice or fault of those who end up with less, so long as it is proper to hold the individuals responsible for the voluntary choice or faulty behaviour that gives rise to the inequalities. (1990: 176)

Hence, another name of luck egalitarianism is “responsibility-sensitive egalitarianism,”<sup>70</sup> which illustrates that the idea of equality demands that people are held responsible for their genuine choice. What’s important here is that to accommodate the idea of individual responsibility into the core of egalitarianism, and this justifies resulting inequalities between people that reflect their choices. This is what Cohen said: “the most powerful idea in the arsenal of the antiegalitarian Right: the idea of choice and responsibility” (2011: 32). When equipped with the idea of individual responsibility, luck egalitarians are capable of justifying inequality between people. Consequently, though objecting to luck-generated inequalities, luck egalitarianism permits inequality that reflects from people’s responsible *self-affecting* choices.<sup>71</sup>

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<sup>70</sup> For a discussion of the relationship between responsibility and luck egalitarianism, see Carl Knight (2009: 169-196)

<sup>71</sup> David Miller (2014) has argued that luck egalitarians tend to assume the choices that people made are self-

The last component of luck egalitarianism is its commitment to equality. To be a theory of egalitarian justice, it must tell when some forms of inequality would be permitted, when they are unjustified, and for what reason. What luck egalitarians affirm is “an equality of (differently interpreted) opportunity or access, *as such*: it does not recommend it merely in the light of claims about the consequences of adherence to the recommended egalitarian principle” (Cohen, 2011: 120). Accordingly, luck egalitarians endorse a principle of initial distribution that egalitarian justice requires that people have an equal amount of certain “currency,” such as resources, welfare, capabilities, or some hybrid approaches (Clayton & Williams, 1999). They also provide *a doctrine of just steps* in that, after the initial equal distribution people cannot ask for compensation in the name of justice only when their disadvantages do not reflect their choices. Luck egalitarians recommend that an unequal outcome that stemmed from a just initial distribution, and was arrived by just steps, as understood above, was *not unjust*. The luck/choice distinction, then, is employed to tell us when disadvantages are justice-upsetting and when they are not.

Consequently, a preliminary understanding of luck egalitarianism can be summarised as the following three statements:

- (1) Inequalities that do not reflect people’s own responsible choice are *unfair*.
- (2) Inequalities that reflect people’s own responsible choice are *not unfair*.
- (3) Moreover, some hold that equalities that do not reflect people’s own responsible choice are *unfair* (Elford, 2018: 1207).

One of the disagreements among luck egalitarians is that whether or not justice not only permits but also *requires* inequality that arises from people’s different choices (Miller, 2014:

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affecting, but, in reality, most of their choices are other-affecting. As a result, there would be an internal incoherence within the luck/choice distinction that one’s own choice is *in itself* another’s brute luck. In response, see Gideon Elford (2017a).

136-137; Elford, 2017a: 619). If the core idea of luck egalitarianism is the choice/luck distinction, then there could be “unjust equality” when A and B are equally well off, but B’s advantages are due to brute luck while A’s are her own making (Cohen, 2011: 121). One might wonder whether luck egalitarians should correct such an unjust equality. Cohen seems to endorse explicitly (1), reject (2), and regard (3) as a less urgent injustice (2011: 121, 131-143). Moreover, Cohen has argued that the proper name of inequalities that reflect people’s responsible choice is *legitimate*, but *not fair*, because legitimacy refers to a final situation in which “no one has a right to complain against its character” (Cohen, 2011: 128). Still the unequal outcome, Cohen insists, is unfair, and therefore unjust, in opposition to Dworkin’s argument that option luck preserves justice.

On the other hand, Shlomi Segall explicitly rejects (3) because, for him, “luck egalitarian justice is properly concerned only with *inequalities*” (2009: 13).<sup>72</sup> However, contra Segall, others hold that since the luck/choice distinction is so essential to luck egalitarianism, and since the core and uncontroversial idea of luck egalitarianism is to eliminate the effect of brute luck, then, it would be inconsistent for luck egalitarians not to object to equalities that result from brute luck.<sup>73</sup> Luck egalitarians, thus, differ in whether justice requires, or simply permits, (in)equalities that stem from people’s choices. The controversy is just one of many disagreements among luck egalitarians.

In committing to the luck/choice distinction, luck egalitarianism is a broad church, and within the family of views, there are different variations on luck egalitarianism, such as how to draw a proper line between option and brute luck, or when people ought to be liable for their genuine choices, or what kind of distributive pattern that luck egalitarians should employ. I will return to these issues when examining the objections that social egalitarians pose to luck egalitarianism. Now, let us introduce social egalitarianism.

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<sup>72</sup> This view is also supported by Susan Hurley (2003) and Larry Temkin (1993).

<sup>73</sup> For an objection to Segall’s view, see Knight (2011) and Albertsen & Midtgaard (2014).



## 5.2. Social Egalitarianism

In this section, I introduce the core ideas of social egalitarianism in general, contrasting it with distributive egalitarianism. I explain what social egalitarians mean by an emphasis on social equality, and their ideals of a society of equals.

### 5.2.1. The Social and Relational Notion of Equality

Social egalitarians have accused distributive egalitarians of misconstruing the point of equality as distributive: distributive egalitarians, it is alleged, unduly conceive of the idea of equality as a way to guide our allocation of benefits and burdens between parties.<sup>74</sup> Roughly, distributive egalitarians regard two individuals as equal where there is some equal feature of the goods that they enjoy – for example, an equal net amount of certain goods, equal opportunities to obtain certain goods, and so on. The distributive understanding of equality, however, has been perceived by social egalitarians as a mistake. Unlike distributive egalitarians, the ideal of equality, social-relational egalitarians contest, is best understood as social and relational (cp. Anderson, 1999; Scheffler, 2003, 2005; Forst, 2014: 17-31; Young, 2011: 15-38). Social egalitarians have claimed that distributive egalitarians have overemphasised the issue of what an equal distribution should involve, neglecting another more important aspect of the ideal of equality: namely, the issue of *how we regard and treat one another as social equals* (Mason, 2012: ch.1, 2015; Miller, 1997: 232; Wolff, 1998: 107-110).

Where distributive equality is about equality of certain metrics, social equality is about

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<sup>74</sup> Amartya Sen addressed the question of “Equality of What” in his Tanner Lecture, which enquires what metric egalitarians should adopt to establish an equal distribution for social equals. See Sen (1980). Besides, Derek Parfit addressed another important issue which asks to distinguish between strict egalitarianism and so-called “Prioritarianism,” see Parfit (1997).

*equality in status*. It is important to note that status need not be understood as just another good that we might distribute among people; rather, the value of equal status depends on relationships between them. What social egalitarians really care about is whether “the social relations have a suitable (egalitarian) character” (Lippert-Rasmussen, 2018b: 6). To see this, imagine a slave-owning society which consists of two classes: masters and slaves. Suppose that society distributes pertinent goods according to the principle of equality to every social member because the dominant class is very generous. Though this would meet some requirement of distributive equality in that each person in that society enjoys an equal amount of certain goods, social egalitarians would condemn that society as deeply inequalitarian. Despite the equal distribution among citizens, members of the society do not enjoy equal status in the sense that the dominant class is superior to the dominated class, either in that the dominated class is excluded from participating political procedure, or in that the dominant class does not treat and regard the dominated class as social equals. Consequently, the case illustrates that distributive equality does not exhaust the meaning of a society of equals. The equality of status is another important aspect of living as social equals.

Central to the idea of social equality I mentioned, is that people *treat* and *regard* each other equally. Thus, social egalitarians must explain what counts as treating and regarding one another as equals. Cohen has suggested that treating and regarding are two distinct kinds of terms (2013: 197). One can regard another as an equal but fail to treat them as an equal. This is either because she does not know how to treat others as equals, or because she is unable to do so, or just because she misunderstands the way to treat others as equals. Vice versa, one can treat another as an equal without truly regarding another as an equal. For example, a hypocritical person, who wants to win the reputation from the public, might act politely to a homeless person, while, within his mind, thinking that the homeless person is inferior. In this case, although the hypocritical person treats the homeless person equally,

he does not really regard others as equals. This suggests that treating as equals and regarding as equals are two distinct notions. However, what exactly is it to treat and regard one another as equals?

In general, treating others as equals has “a behaviour component” while regarding others as equals is “an attitudinal component” (Lippert-Rasmussen, 2018b: 71). With respect to the behaviour of treating as equals, social egalitarians aim to eliminate inequalitarian social relations, such as domination, oppression, alienation, and social hierarchy (Anderson, 1999: 313; Scheffler, 2003: 22; Wolff, 2015b: 24; Fourie, 2012: 110-117; Young, 2011: ch.2). One fails to treat others as social equals when one dominates, oppresses, or exploits one’s social fellows. Social egalitarians, then, object not only to asymmetrical relations where people are divided into superiors and inferiors but also, the behaviour that one uses the asymmetry to gain advantages. *Treating one another as equals* could be divided into *the equality of social status* and *acting equally*. Concerning the equality of social status, social egalitarians will object to unequal social relations where some obtain unfair advantages while others do not. For instance, in a democratic society where some have one vote, and others have two votes, the society, though democratic, is not a society of equals since some have more political power than others. Although people do not act unequally toward each other, the society upsets egalitarians. Then, social egalitarians may object to unequal social relations even if no one acts unequally to others.

On the other hand, the focus of treating one another as equals is more than the equality of social status in the above sense. For social egalitarians, it is important that one ought not to act unequally toward each other by, for example, seeking advantages in asymmetrical social relations. When one dominates, exploits, or oppresses another, one fails to treat another equally. Our ordinary interactions, then, is *the site* of treating one another as social equals (Mason, 2015: 129). Furthermore, what many social egalitarians have in mind is how both individuals and basic institutions *express* certain attitudes properly

to other members (Schemmel, 2011: 133-137). In a society of equals, one ought to treat *and* regard her fellows as social equals. Let us take same-sex marriage, for example. In many countries, even though same-sex marriage has been legalised, it could happen that most citizens and the ruling party do not really support same-sex marriage. We will think that it is important for egalitarians that citizens and the ruling party express a non-forbidding attitude to the public. Otherwise, society fails to be egalitarian in the sense that same-sex couples are not recognised by the majority. Hence, one way to construe *treating and regarding one another as equals* is to focus on how governmental institutions or citizens express correct attitudes to social members.

Now consider the attitudinal issue further – what it means to regard others as equals. One simple view is this: X regards Y as an equal if X *consciously believes* that Y is her equal. However, as Lippert-Rasmussen (2018b: 85-86) points out, people’s cognitive and non-cognitive attitudes, and their explicit and implicit beliefs, could be divided. This means that, for instance, although some might welcome and respect the minority cognitively and explicitly, they may nevertheless implicitly harbour disdain for the minority. Social egalitarians thus ought to consider whether we have reason to regulate people’s non-cognitive attitudes and implicit beliefs. The social egalitarian slogan: to treat and regard one another as equals, therefore, signifies another dimension of the ideal of equality, which is distinguished from the distributive notion of equality.

Having introduced the social relational notion of egalitarianism, one might think that what a society of equals is remains unclear. While distributive egalitarians have specified couples of ways to distribute goods in an egalitarian manner, it seems that social egalitarians do not have a clear picture of what a society of equals is. And if we do not have a clear picture of it, we do not know whether or not we have achieved it. In what follows, I examine three prominent social egalitarians – Elizabeth Anderson, Samuel Scheffler, and Jo Wolff – of their ideal of what a society of equals is.

### 5.2.2. Elizabeth Anderson's Democratic Equality

Concerning the idea of social equals, Anderson has proposed what she terms “the democratic conception of equality”. In her view, at the core of democratic equality is that it is “a relational theory of equality”. Anderson summarises the relevant equal relation as follows: two people are “equal when each accepts the obligation to justify their actions by principles acceptable to the other, and in which they take mutual consultation, reciprocation, and recognition for granted” (1999: 313). To elaborate, in Anderson’s view, a society of equals is the one in which members take each other’s interests and perspectives into consideration when determining the rules that govern them. In this way, social members recognise others as independent and responsible agents; no one is superior to another, and members of society respect each other.

Anderson listed five more detailed principles of democratic equality:

- (1) Democratic equality “identif[ies] certain goods to which all citizens must have effective access over the course of their whole lives.”
- (2) Democratic egalitarians “should be able to justify such guarantees of lifetime accessibility without resorting to paternalism.”
- (3) Democratic egalitarian principles “should offer remedies that match the type of injustice being corrected.”
- (4) Democratic egalitarian principles “should uphold the responsibility of individuals for their own lives without passing demeaning and intrusive judgments on their capacities for exercising responsibility or on how well they have used their freedoms.”
- (5) Democratic egalitarian principles “should be possible objects of collective freedoms” (Anderson, 1999: 314).

Almost all these five points of democratic equality derive from an opposition to luck egalitarianism. According to Anderson, (1) contrasts with luck egalitarianism because she believes it will not guarantee citizens a lifelong supply of certain goods. It is important for the democratic conception of equality that citizens have the capabilities necessary to participate in a democratic regime; yet, Anderson objects, luck egalitarianism permits people to be deprived of some of these capabilities where these deprivations result from a voluntary choice.<sup>75</sup> Meanwhile, (2) rejects the interference of people's imprudent choices by appealing to paternalistic reason, which would be proposed by some luck egalitarians. Next, unlike distributive (including luck) egalitarians who start from ideal theories, (3) suggests that social egalitarians believe that to identify social injustice, rather than ideal principles of justice, is the primary concern of political philosophy. Consider (4). While social egalitarians preserve an ideal of treating people as responsible, they want to avoid the demeaning and intrusive judgments that Anderson worries that luck egalitarian policies would express. Then, (5) indicates the reason why Anderson sees her theory as democratic: since principles are determined by all, but not few. For Anderson, while luck egalitarians justify their principles from a *third-person* perspective, social egalitarians adopt "a *second-person* or *interpersonal* conception of justification" (Anderson, 2015: 22-30). (5), thus, guarantees that citizens are acting collectively in determining rules that govern themselves.

Based on her critiques of luck egalitarianism, Anderson's democratic notion of equality, then, provides an ideal of social equality.<sup>76</sup> However, one might wonder how far her notion of democratic equality is different from some version of luck egalitarianism. I will examine Anderson's objections to luck egalitarianism later on. Let us turn to Samuel Scheffler's ideal of a society of equals.

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<sup>75</sup> It is unclear whether Anderson adopts a complete lives kind, a continuous segments kind, or corresponding segments kind, of egalitarianism (McKerlie, 2013: ch.2 & 4, 1989).

<sup>76</sup> For another account of democratic equality, see Niko Kolodny (2014: 303-310).

### 5.2.3. Samuel Scheffler's Egalitarian Deliberative Constraint

Scheffler proposes the *egalitarian deliberative constraint* (EDC) as a way to understand what a society of equals is. EDC is defined as follows:

If you and I have an egalitarian relationship, then I have a standing disposition to treat your strong interests as playing just as significant a role as mine in constraining our decisions and influencing what we will do. And you have a reciprocal disposition with regard to my interests. In addition, both of us normally act on these dispositions. This means that each of our equally important interests constrains our joint decisions to the same extent. (Scheffler, 2015: 25)

EDC is very similar to Anderson's democratic conception of equal relationships, but he explains some aspects in some more detail. He provides six additional points. First, it is important that "each person's interests should play an equally significant role in determining [certain] decisions" (Scheffler, 2015: 26). Second, those who endorse EDC must consider the standpoints of others. Third, for Scheffler, a joint decision is not always achievable, either because of the conflicts of interests or because there are some reasons that make a joint deliberation unavailable. Then, EDC acknowledges that "participatory requirement[s] can be modified" case by case, but "only in ways that are acceptable to the parties themselves" (Scheffler, 2015: 27). To recognise each participant and their relevant interests remains crucial of EDC.

Fourth, and more importantly, EDC does not guarantee that the ultimate decision ought to make all relevant parties equally well-off in terms of their interests; rather, EDC emphasises that "the comparably important interests of each party should play a comparably significant role in influencing decisions made within the context of their relationship" (Scheffler, 2015: 28). This means that, where the interests of various parties

are similarly important, these should have a comparable priority in the deliberative agenda; and that may not be true where certain parties' interests are more important than others.

Scheffler's fifth idea concerns how to understand the "importance" of each party's interests. Interests can be important, he argues, simply because one believes it is important. True, people's judgments on what counts as an important interest could sometimes be mistaken, but it seems inevitable to rely on one's own judgement in defining what counts as important. However, the advantage of EDC is this: since EDC requires that parties "treat (what are in fact) the equally important interests of each of them as having equal significance for their decisions", it serves as an independent standard of importance that diverges from one's own judgment (Scheffler, 2015: 30).

Last, Scheffler stresses that it is more appropriate to treat the egalitarian deliberative constraint as guiding "a complex interpersonal practice" (2015: 30), rather than as a rule to regulate egalitarian relationships. This means EDC is a practice that people should bear in mind and implement in pursuit of an equal relationship with others. When so claiming, EDC serves as a guide in ordinary interactions, rather than a principle regulating basic institution.

In sum, Scheffler's EDC identifies a deliberative procedure through which we can enable and pursue egalitarian relationships, and less of a description of an ideal society of equals. Still, perhaps, armed with his view, a society of equals is the one in which each social member takes other citizens' comparably important interests into account when deliberating about what to do. When EDC is well-applied in every dimension of society, no one would be excluded from a decision-making procedure and, therefore, the ideal of social equality would be partially, if not fully, achieved. However, like Anderson's democratic equality, one might wonder whether pluralist luck egalitarians who, weighting between different and conflicting values, would deny Scheffler's EDC. Especially, EDC seems to be able to supplement the deficiency of luck egalitarianism, that is, they are less



concerned with regulating ordinary interactions. And it seems to me that EDC does not pose any objection to luck egalitarians. So, I would not pursue the issue any further. Now, let us turn to Jo Wolff's account.

#### **5.2.4. Jonathan Wolff: Should We Need A Positive Account of Social Equality?**

Unlike social egalitarians — such as Anderson and Scheffler — who feel a pressing need to develop a positive account of social equality, Wolff denies the urgency to do this. He does so for two reasons. One is the *Disagreement thesis* — that people disagree about what counts as a society of equals. Another is the *Manifest Injustice thesis* — the methodological position that it is unnecessary to have an idea of justice in order to identify manifest injustice. I reject part of *Disagreement* but accept *Manifest Injustice*.

##### **5.2.4.1. The Disagreement Thesis**

In Wolff's view, Anderson's democratic conception of equality, or Scheffler's egalitarian deliberative constraint, attractive as they might be, do not provide either a sufficient or even a necessary, condition of a society of equals (Wolff, 2015b: 23, 2019: 2-3). This is because "[t]here are probably many different ways in which a society could count as a 'society of equals', and they may well be very different from each other" (Wolff, 2015b: 23). For instance, the Paris commune in 1871, a hippy community of 1960s America, and some self-organised worker associations in South America may all be regarded as examples of a society of equals. However, for Wolff, since these societies vary greatly from one to another, it seems that no common features could be identified among them. Hence, the Disagreement thesis holds that because people differ in the substance of a society of equals, and such divergence makes identifying necessary/sufficient features of a society of equals

fruitless, “any particular specification is likely to seem narrow, dogmatic or unconvincing” (Wolff, 2015b: 23). This explains why, for Wolff, there is no need to pursue a positive account of social equality.

Indeed, many have tried to identify both necessary and sufficient conditions of social equality; however, few really succeed. Rather, most social egalitarians explore the notion of social equality by negating social inequalities first. For instance, some have argued that a society of equals is the one without domination (Garrau & Laborde, 2015), asymmetry of decision power (Schuppert, 2015a: 115-117), and inequality of esteem (Fourie, 2015). For Wolff, although these accounts are correct in that objectionable social relations should be exempted from a society of equals, it is doubtful whether or not they offer a necessary condition, or jointly sufficient condition, of social equality. For instance, in a democratic society where each citizen obtains equal political power, this society could fail to achieve the ideal of social equality because, for example, populist leaders use voting to suppress and discriminate another social group. Kolodny, on the other hand, has rejected that neither the asymmetry of cooperatively produced means, nor “a failure of equal concern for people’s independent claims to means”, are sufficient, and necessary for the notion of social equality (2014: 292-294). Besides, it seems unconvincing that a society of equals with “love and care solidarity” would suffice to for social equality (Baker, 2015), because for some, a society of equals does not need to be that intimate. These considerations suggest that to pursue a society of equal is likely to be incomplete: the substance of social equality is so rich, divergent, and open that cannot be fully achieved by negating social inequalities or by providing positive contents.

Nonetheless, although it is hard to define a society of equals, in my view, it is possible to approach it by listing the necessary conditions of it. With Wolff, I think that to seek for a full account of social equality is easy to fail; however, it is meaningful that we ask whether or not we are closer to a society of equals. This is where I disagree with Wolff: while he

denies the possibility of providing both necessary and sufficient conditions of social equality, it is possible and meaningful for me to list necessary conditions of a society of equals, even if a jointly sufficient condition is never achievable. For example, the principle of non-exploitation is necessary, though insufficient, for a society of equals. A society of equals cannot be the one in which individuals exploit others, or where the whole system is exploitative. Marx held this view. Marx has indicated how capitalist exploitation stems from and generates social injustice. Even if Marx's society of equals does not fully achieve a society of equals, still it is meaningful to claim that we are approaching a society of equals. Even though a complete account of social equality seems impossible, and the list of necessary conditions of social equality can be continuously expanded, this does not follow that we ought not to seek for a more equal society.

#### **5.2.4.2. Manifest Injustice Thesis**

For Wolff, the pursuit of a positive account of social equality is not only impossible due to the disagreement thesis, but also undesirable. The question of what counts as a society of equals, he suggests, makes some social egalitarians embarrassed. Social egalitarians assume implicitly that a theory of egalitarian justice is incomplete if it fails to provide an ideal theory of social equality. However, following Sen's methodology of political philosophy, Wolff, by contrast, does not think that a theory of social equality needs an ideal form. Rather, the Manifest Injustice thesis claims that "manifest injustice can be identified without reference to a positive theory of justice" (Wolff, 2015a: 215). Granting that the core goal of political philosophy is to identify manifest injustice, both Sen and Wolff deny that we must formulate an ideal theory of justice in order to succeed in achieving this goal. Rather, it is enough for social egalitarianism to identify manifest injustice by referring to our world as it is now.

To assess this argument, let us explore Sen's methodology. The core idea in Sen's view is that the *transcendental* approach — an approach that aims at identifying perfectly just institutions — is neither sufficient nor necessary for the comparative assessment of justice; we can instead adopt the *comparative* approach, which aims to make evaluative comparisons between the choices and policies available to us presently (Sen, 2018: 15-17). What's more, the comparative approach can do its own work without any need of appealing to a transcendental theory of justice. Sen's analogy: people can compare the height of two mountains without knowing what the highest mountain is; the latter issue does not determine the former (Sen, 2009: 102). Thus, the transcendental approach is not necessary for theoretical success. As he puts it,

[T]he diagnosis of injustice does not demand a unique identification of 'the just society', since a univocal diagnosis of the deficiency of a society with, say, large-scale hunger, or widespread illiteracy, or rampant medical neglect, can go with very different identifications of perfectly just social arrangements in other respects. (Sen, 2009: 100)

For Sen, the identification of manifest injustice is so clear that it does not need any prerequired knowledge on what just institutions would look like. Where this is true, the transcendental approach is redundant to the pursuit of identifying manifest injustice. In following Sen's position, Wolff holds that the identification of manifest social inequalities does not require the formulation of a positive account of social equality.<sup>77</sup> And this position is especially important when it comes to the ideal of social equality: If the manifest injustice — manifest social inequality — is clear and plausible, then the limit of social egalitarianism that we have been discussing — i.e. the difficulty in giving a positive account

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<sup>77</sup> The fundamental difference between Sen's and Wolff's position on the methodology of political philosophy is on the role of ideal theory. While Sen may attempt to abandon any pursuit of an ideal theory of justice, Wolff, by contrast, does acknowledge the need for ideal theories for some sound reasons. See Wolff (2015: 215).

of social equality—is not particularly troubling. Hence, for Wolff, in characterising social egalitarian theory, a positive ideal is not particularly required.<sup>78</sup>

### 5.2.5. Concluding Remarks

While Anderson and Scheffler have provided their ideal account of what a society of equals is, Wolff insists that to identify social inequalities is enough for social egalitarianism. Note that I do not mean to suggest that social egalitarianism must take a non-ideal form while luck egalitarianism must take an ideal form. Anderson's democratic equality and Scheffler's egalitarian deliberative constraint are ideal forms of social egalitarianism. Wolff's non-ideal form of social egalitarianism is only a specific way of understanding the notion of social equality. On the other hand, we have seen that for social egalitarians, distributive equality is not sufficient for a society of equals. Rather, to achieve social equality, people ought to treat and regard one another as equals by acting equally and expressing correct attitudes toward their social fellows. Having introduced luck and social egalitarianism, in what follows I examine three objections that social egalitarians pose to luck egalitarians, namely, the intrusive objection, the disrespectful objection and the harshness objection. By reviewing the three objections and how luck egalitarians may reply to them, this will facilitate our understanding of the disagreement between distributive and social egalitarianism, and the nature of egalitarian justice.

### 5.3. The Intrusion Objection

Some might worry that the implementation of luck egalitarian policies requires “a great

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<sup>78</sup> This view echoes Sen's claim (2006) and is controversial. See Ronald Dworkin (2011: 476-477) for his reply to Sen's view.

deal of knowledge of individual circumstances” (Wolff, 1998: 106-107). For example, since the measurement of welfarist egalitarianism is people’s relative welfare, the government has to invade people’s everyday life so as to collect their welfare data. Then, one objection to luck egalitarian policy is that the doctrine, when implemented by the government, “might be intolerably intrusive” (Wolff, 1998: 102). Anderson, similarly, worries about the intrusion of government. Her worry is that, in order to conduct the choice/luck distinction, proposed by luck egalitarianism, the government might need to make judgments on people’s behaviours so as to know whether some of their behaviours are liable for themselves and whether some of them are a matter of bad brute luck (1999: 310). When implementing such policies, it is inevitable that the government has to invade people’s personal life to collect data and then make a judgment. As a result, the implementation of doctrines of luck egalitarianism in general, welfarist egalitarianism in specific, may invite gross intrusion of state intervention. Such an intrusion might undermine our liberty and thus should be prohibited. The intrusive objection, then, questions *the implementation of luck egalitarian policy*, rather than an objection to *the principle* of luck egalitarianism.

The Intrusion objection, however, applies to social egalitarians as well. Since the doctrine of social equality is to treat and regard others as equals, the implementation of the social egalitarian doctrine may invade people’s liberty in the same manner. The government will need to surveil individuals’ life and how they interact with others, so as to know whether they do treat others equally or unequally. More severely, with respect to ensuring equal regard, the government might need to ask individuals to confess their real thoughts and attitudes so that the government could know whether the ideal of social equality is really realized. Such a world is not entirely different from the one in George Orwell’s famous book, *1984*, in which citizens are under strict supervision. Although the motivation is different – one aims to articulate an egalitarian society, while *1984* describes a totalitarian world – the effects, however, seem similar: the intolerable intrusion of states

into personal life.<sup>79</sup> The implementation of social egalitarian policies faces the intrusive objection as well.

The intrusion objection does not really object to luck egalitarianism *in principle*. It does not question whether the idea of equality demands the luck/choice distinction, or/and whether option luck preserves egalitarian justice. Rather, the intrusion objection only indicates that the *implementation* of the luck egalitarian doctrine by the government might sabotage personal liberty. Hence, luck egalitarians may respond: “Yes, I agree that the implementation of the luck egalitarian doctrine might undermine personal liberty. So, granted that we also cherish the value of liberty and the value of equality is not always more important than it of liberty, we had better implement the luck egalitarian doctrines in ways that would not invade personal liberty.” Here, luck egalitarians could adopt a “weak *equalisandum* claim” which acknowledges that people “should be as equal as possible in some dimension but subject to whatever limitations need to be imposed in deference to other values” (Cohen, 2011: 5). In other words, “any reasonable egalitarian will be a pluralist. Equality is not the only thing that matters to the egalitarian” (Temkin, 2003: 63). The pluralist position is consistent with the core luck egalitarian idea that egalitarian justice should be sensitive to the choice/luck distinction.

Consequently, the intrusion objection is, I believe, unsuccessful, either because it applies to social egalitarian policies as well, or because it does not really threaten the doctrines of luck egalitarianism.

#### 5.4. The Disrespectfulness Objection

The disrespectfulness objection, related to the intrusive objection, claims that even if the

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<sup>79</sup> To be clear: the intrusion objection applies only to those social egalitarians whose accounts demand equal regard among citizens. Hence, Anderson’s democratic equality and Scheffler’s EDC refrain from the intrusion objection.

*implementation* of the luck egalitarian policies is fair, it could make some fellow citizens *humiliated*. The *doctrine* of luck egalitarianism also expresses *disrespectfulness* to them. Then, tension exists between fairness and respect—two egalitarian ideas (Wolff, 2010: 343). More precisely, the disrespectful objection argues not only that *in effect* luck egalitarian policies might make some citizens feel humiliated, but also that the luck/choice distinction that luck egalitarianism endorses expresses a disrespectful attitude to fellow citizens. The disrespectful objection, then, challenges both the implementation and the principle, of luck egalitarianism.

This objection has two dimensions. The first concerns the instrumental problem of revelation. As Wolff argues (1998: 113-115, 2010: 343-346), no matter whether one's disadvantages are caused by one's choice or bad brute luck, revealing these facts about us is humiliating, either for ourselves or for others. The argument concerns *the actual effect* of the implementation of luck egalitarian policies. The collection of one's data, required by luck egalitarian policies, leads to "shameful revelation" in some cases. For instance, some of the unemployed through no fault of their own have to suffer a revelation of the fact that they are untalented, or that they are unattractive by labour market due to some kinds of features they have, and that is humiliating. The humiliating effect may apply to those whose unemployment is caused by their choices as well. Revealing one's unemployment could be humiliating in that one has to suffer a revelation of the fact that one is so incapable of organising her plan well, which results in her plight. To reveal one's incapability is in itself humiliating. Note that Wolff does not deny luck egalitarianism as a plausible doctrine of fairness, but only to point out that fairness and respect can conflict (2010: 346-347). Hence, if the actual effect of the implementation of luck egalitarian policies threatens one's esteem, a society in which one's esteem is undermined is, in that respect, *inegalitarian*.

With respect to the disrespectful objection, there are two responses. The first



response acknowledges that the implementation of the luck egalitarian policies may generate humiliating effects on people, and, therefore, we ought to design the policies in a careful way that would not make people feel humiliated. Indeed, what Wolff asks is “a dynamic balance” between fairness and respect that institutions are “generally fair, but avoid various causes of disrespect” (1998: 120). Besides, the second response questions whether the implementation of luck egalitarian policies is necessarily humiliating, or a contingent fact about our societies that ought to be corrected. Wolff did acknowledge that the fact that some feel humiliated under the luck egalitarian policies is a contingent factor, but a “stubborn fact” that egalitarians cannot leave it aside (2010: 343, 1998: 114-115). However, whether or not it is shameful to reveal X depends on social attitudes, and people should not feel shameful because of the stigmatising attitudes that society imposes. For example, in a society with fixed gender roles, males are not encouraged to express their emotions and males who cry in public might feel shameful due to the conventional social attitude. Such inappropriate social attitudes, nonetheless, should be corrected, and no one should feel shameful to express their emotions that do not meet inappropriate social attitudes. Now, the second response insists that the unemployed should not feel shameful when revealing their unchosen disadvantages because society imposes inappropriate social attitudes on those who suffer bad brute luck, which should be corrected. The two responses, then, can reply to the disrespectful objection as regards the implementation of the luck egalitarian policies. Now we turn to the second dimension of the disrespectfulness objection.

The second dimension of the disrespectful objection concerns the theoretical distinction incorporated into the very essence of luck egalitarianism. Since luck egalitarians set up a standard — the luck/choice distinction — which allows discrimination between people, the standard, in principle, divides people *at least* into two categories: the prudent and talented, and the imprudent and untalented. The division is problematic for social

egalitarians because, as mentioned previously, one interpretation of the ideal of social equality demands that we *express proper attitudes to fellow members*. However, the doctrine of luck egalitarianism seems to express implicitly the belief that one should aim to be a prudent person, and an imprudent person would be disdained. More precisely, to divide people according to the luck/choice distinction, it seems, amounts to make an appraisal of their behaviour relative to the distinction. Hence, granted that luck egalitarianism is a plausible doctrine of fairness, it remains questionable whether the implicit belief expresses proper attitudes to all citizens. For social egalitarians at least, it is not.

Moreover, the luck egalitarian policies may allow the government to express disrespectful attitudes toward citizens (Anderson, 1999: 305-306, fn.61). In order to perform luck egalitarian policies, the government has to collect and define the relevant features of each individual, e.g. the imprudent, the untalented, and the irresponsible, so forth. As a result, the government has to “pass [evaluative] judgement on how much people are responsible for their expensive tastes or their imprudent choices” (Anderson, 1999: 310). Social egalitarians would not think that this is a proper attitude for the government to express to citizens. Hence, the second dimension of the disrespectfulness objection attacks not only on the effect of luck egalitarian policies that some citizens might feel shameful when revealing their incapacity but, more importantly, the disrespectful attitude expressed by the doctrine of luck egalitarianism to their fellows.

Note that luck egalitarians cannot respond to the objection by reference to a pluralist position this time. The doctrines of luck egalitarianism are under attack as well. Now it would be better to distinguish two kinds of respect, proposed by Stephen Darwall (1977), namely, *recognition respect* and *appraisal respect*. To have recognition respect for a person is to treat the fact that she is a person as restricting how we ought to act in a permissible way (Darwall, 1977: 39-41); in contrast, to have appraisal respect for a person is to give positive appraisal to some features of a person excellence (1977: 44-45). For example, when we

give positive appraisal to Roger Federer, one of the best tennis players, for his excellent performance, we respect him in an appraisal-respect manner. When we treat a person in morally appropriate ways because of the fact that she is a person, we respect her in a recognition-respect manner. The disrespectful objection to *the principle* of luck egalitarianism, then, could take both forms of respect. Regarding recognition respect, the disrespectful objection states that it is disrespectful for luck egalitarianism to abandon the imprudent because to have recognition respect for a person is to guarantee their life-time access to a threshold of capacities (Anderson, 1999: 318-319). This is the harshness objection, which I will examine later. Regarding appraisal respect, the disrespectful objection states that the luck/choice distinction, proposed by luck egalitarianism, expresses disrespectful attitudes to their fellows because to divide people into prudent/imprudent is an inappropriate standard of an appraisal. Thus, the disrespectful objection at stake concerns appraisal respect, rather than recognition respect.

Luck egalitarians could respond to the disrespectful objection that treating individuals as responsible for their choices is treating them with respect; not to treat them as responsible for their choices, they argue, is disrespectful, because it treats them like they are children who lack the capacity to lead a life that is authentically theirs. The response, however, does not reply to the disrespectful objection as regards appraisal respect, because it contests with social egalitarians that to have *recognition respect* for a person is to let people bear responsibility for their chosen disadvantages, rather than that the prudent/imprudent distinction is appropriate for a standard of appraisal respect. The point of the disrespectful objection, then, concerns primarily whether the imprudent/prudent distinction is an appropriate standard for a society of equals, even though the distinction works perfectly as a principle of fairness.

Clearly, no one likes to be judged as imprudent even if he is! Given this fact, the prudent/imprudent distinction inevitably makes an appraisal that some people are more

competent than others in making a decision (Voigt, 2015: 97-98), which, it seems, will make some feel inferior. Moreover, even if it is a social fact that some are less capable than others in making a decision, some might feel disrespected when being judged as imprudent. We then have to consider whether or not the imprudent/prudent distinction is an appropriate standard of appraisal respect. Note that the argument here is not that we ought not to make any appraisal, since some kind of inequality of esteem could be justified by social egalitarians (Wolff, 2019: 9).<sup>80</sup> Rather, the objection maintains that it seems disrespectful to make an appraisal to people according to the prudent/imprudent distinction, even though it is fair that people should be liable for their chosen disadvantages.

Luck egalitarians, however, may have two further responses. First, luck egalitarians might dispute that they do not need to divide people into two categories. In most cases, people are a mix — sometimes prudent and sometimes not. The luck egalitarian principles do not carve out two different groups of people so much as specify when we have a (stronger) case for compensation and when we have a (weaker) case. Second, luck egalitarians might contend that people should not feel disrespected when judged as imprudent because that is an accurate description of their choices without attempting to disdain a person. To judge a person as imprudent needs not involve passing any evaluation to that person. It could be a misunderstanding that the imprudent feel not respected by the doctrine of luck egalitarianism to that respect.

Now whether or not the second response is successful depends on whether it is a constant or contingent social fact that people will feel disrespected when being judged as imprudent. If the fact is a constant fact of human society, then the disrespectful objection as regards appraisal respect is not specific to luck egalitarians. Social egalitarians who incorporate the notion of personal responsibility into their theories of egalitarian justice

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<sup>80</sup> Some social egalitarians might insist that any kind of inequality of esteem is inequalitarian.

(Anderson, 1999, 326-331), are subject to the same objection as well. As Anderson says, we “should uphold the responsibility of individuals for their own lives without passing demeaning and intrusive judgments on their capacities for exercising responsibility or on how well they have used their freedoms” (1999: 314). In Anderson’s democratic egalitarian society, some people would be more competent than others in making prudent political decisions, even if she will guarantee that no one is below a threshold of sufficiency. However, if the fact is a contingent factor, luck egalitarians, then, could argue that people mistakenly feel disrespected when being judged as imprudent, which they should not. The imprudent/prudent distinction does not, in fact, express disrespectful attitudes to citizens. This reply, in my view, is successful. I shall not pursue the objection any further.

In sum, although luck egalitarians can adopt a pluralist position that takes the idea of respect into account and avoids the humiliating issue by designing a respect-sensitive administrative process, the luck/choice distinction that luck egalitarians endorse seems problematic for social egalitarians, because the distinction seems to be an inappropriate standard of appraisal respect and, therefore, expresses an improper attitude toward some fellow citizens. However, whether the doctrine of luck egalitarianism is disrespectful depends on whether or not the fact that people feel not respected when judged as imprudent, is a constant, or contingent, fact. I have argued that if the fact is a constant factor of human society, then both luck and social egalitarians are subject to the same objection. If the fact is contingent, then the principle of luck egalitarians does not, in fact, disrespect the imprudent. The implication of the disrespectful objection to luck egalitarians, then, is that, whether the fact is a constant or contingent feature of human society, we ought to make a balance between fairness and respect. Sometimes, to achieve a society of equals, the consideration of respect will outweigh the principle of fairness.

### 5.5. The Harshness Objection

The Harshness Objection criticises luck egalitarians for abandoning imprudent people who suffer chosen disadvantages. In order to reveal the real force of the objection, we need to clarify three points beforehand. First, the question at stake is about how luck egalitarians should treat victims of bad option luck. For some luck egalitarians, people should be fully responsible for her disadvantage if and only if it reflects their genuine choice. As Cohen specifies, “The amount of genuineness that there is in a choice is a matter of degree” (2011: 32). In other words, one’s choice is, to some extent, influenced by uncontrollable factors. Therefore, in real-world cases, if one’s choices have been reduced, more or less, by bad brute luck, luck egalitarians would have good reason to intervene and offer compensation in proportion to the effect of bad brute luck that one suffers (Voigt, 2007: 395).

Second, it is mistaken to interpret luck egalitarians as if they will leave an uninsured and negligent driver, who makes poor choices and should be held responsible for her imprudence, to die on the road. Instead, luck egalitarians claim that disadvantages that reflect one’s choice are not unfair, but not that people should pay the full cost of their imprudent choice. Most luck egalitarians adopt the notion of “reasonableness” to evaluate what kinds of responsibility should the imprudent agent bear (Segall, 2009; Stemplowska, 2013, 2016; Vallentyne, 2002; Eyal, 2006). The notion of reasonable avoidability strengthens Dworkin’s distinction between brute/option luck distinction.<sup>81</sup> According to Segall, brute luck should be construed as “the outcome of actions (including omissions) that it would

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<sup>81</sup> To be fair, Dworkin does not hold a sharp distinction between brute and option luck. For instance, he said that “the difference between these two forms of luck can be represented as a matter of degree” (2002: 73). Or, in another place, he wrote: “So if the condition just stated were met—if everyone had an equal risk of suffering some catastrophe that would leave him or her handicapped, and everyone knew roughly what the odds were and had *ample opportunity* to insure” (2002: 77, my italics). The two citations suggest that sufficient options to insure would be an important indicator to inform the degree of responsibility for which a person should be liable. For critiques of Dworkin’s brute/option luck distinction, see Kasper Lippert-Rasmussen (2001), Nir Eyal (2006: 3-4), Peter Vallentyne (2002; 2008) and Martin Sandbu (2004).

have been unreasonable to expect the agent to avoid (or not to avoid, in the case of omission)” (2009: 20). In other words, it is society that should compensate for one’s disadvantage when it would be unreasonable to expect the person to avoid a bad situation. Note that the criterion of reasonableness depends on what society could reasonably expect people to act and the substantive requirement of the ‘reasonable avoidability’ criterion differs whenever the circumstance changes (Segall, 2009: 20-22; Voigt, 2007: 397). For some, the availability of full insurance represents a significant factor in assessing whether it would be unreasonable to expect the agent to take all the responsibility (Otsuka, 2002: 44-45; Sandbu, 2004: 294-304; Lazenby, 2014: 670; Stemplowska, 2016: 158; Knight, 2011: 77-81).<sup>82</sup> If the full insurance of specifically risky behaviours is unavailable, brute luck cannot convert fully into option luck and, therefore, people who cannot access full insurance and then have a bad outcome should be compensated for parts of their bad brute luck.

Another interpretation of reasonable avoidability asserts that if the cost of making a specific choice is so great that one has to risk one’s other functionings, then it would be unreasonable to expect an agent to make this choice (De-Shalit & Wolff, 2011: 227). Note that the point of the second interpretation is not that one has insufficient choices but that the cost of her option-set is too high for her not to sacrifice other important functionings. Consequently, in either interpretation, what is at stake is that the option set they face is problematic that their choices would not fully convert brute luck into option luck and therefore, we cannot demand them to take the full responsibility (Hyams, 2019: 23).

Hence, the negligent driver should be partially compensated, if the full insurance is not available in the market, either because no insurance company can ever offer, or because the insurance is so expensive that the driver cannot afford it. In a nutshell, luck egalitarians,

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<sup>82</sup> See Williams & Otsuka (2004), for their further discussion.

equipped with the notion of reasonable avoidability, are able to treat some negligent drivers, which will be regarded as victims of purely option luck, as partial victims of bad brute luck because it is unreasonable that society holds them for the full responsibility of their disadvantage. This suggests how much of a burden an imprudent person should bear will depend on “what we can reasonably expect from agents” (Voigt, 2007: 397). Hence, luck egalitarians, as Scheffler (2005: 15) indicates, would not ask the imprudent to pay the full costs of their choices.<sup>83</sup>

Third, very often, the cases that the proponents of the harshness objection offer are related to the rescue case. However, the rescue cases tend to distort the plausibility of luck egalitarianism because “the rule of rescue” is so intuitive and imperative that it triumphs our consideration of cost and responsibility (Eyal, 2016: 165-167). Eyal warrants that the rescue case may distort our judgment of the implication of personal responsibility in a theory of justice because other moral considerations are jointly played in the rescue case.

To bear these points in mind, now a more sophisticated version of luck egalitarianism is as follows:

*It is unjust for individuals to be worse off than others due to outcomes that it would have been unreasonable to expect them to avoid. (Segall, 2009: 13, my italic).*

The sophisticated version indeed strengthens the power of luck egalitarianism that it refrains from the accusation that luck egalitarians will render the imprudent liable for the full costs of their choices. However, Voigt offers a stronger version of the harshness objection to challenge luck egalitarianism, which is as follows:

When an agent, as a matter of pure option luck — i.e., when unequal brute luck did not affect

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<sup>83</sup> See Section 5.5.3.



the choice the agent faced (for example by limiting the range of options available or by increasing the cost of particular options), and when the agent failed to act in accordance with a standard of reasonableness that was appropriately individuated to take account of the effects of unequal brute luck—ends up in desolate circumstances, then luck egalitarianism requires that we do not provide assistance to this agent, even if there are no opportunity costs associated with the provision of such assistance. (Voigt, 2007: 402)

In Voigt's version of the harshness objection, it targets victims of purely bad option luck who fail to meet a standard of reasonableness. What's important in her version is that, even if the opportunity costs to rescue the imprudent are none, luck egalitarians will not provide assistance to the imprudent, not to mention the case in which the cost of rescuing the imprudent will leave us fewer resources to compensate victims of bad brute luck. Surely, it is controversial whether or not luck egalitarians should rescue the imprudent whenever the cost is zero. The point is that Voigt's version of the harshness objection helps to indicate the disagreement among luck egalitarians. Having presented the harshness objection, now I shall consider how luck egalitarians can respond to the objection in, at least, three ways.

In general, in facing Voigt's version of the harshness objection, luck egalitarians can adopt three approaches: All-luck egalitarianism, the Pluralist approach and the principle of stakes. I shall assess each approach to see whether they are plausible or not.

### **5.5.1. All-Luck Egalitarianism**

All-luck egalitarianism claims that “justice requires neutralizing all differential luck, whether brute or option” (Segall, 2009: 47).<sup>84</sup> Therefore, the unequal effect that each person receives as a matter of option luck is unfair and should be compensated. Consider a gamble

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<sup>84</sup> Henceforth, “ALE” refers to All-luck egalitarianism.

in which one has an 87% opportunity of winning a house but a 13% opportunity of losing one's house. Suppose both Allen and Bob accept the gamble deliberately, and Allen wins while Bob loses his house. For ALE, the unequal outcome between Allen and Bob is unfair because both make the same choice but receive the unequal outcome. The outcome is unfair just because even in the realm of option luck, inequalities that do not reflect their choices are unfair. In other words, justice requires that "there ought not to be a shortfall in well-being between individuals who exercise an identical level of prudence (or imprudence)" (Segall, 2009: 51-52).

Note that the distinction between brute and option luck remain intact under ALE. What ALE requires is that people who make the same choice should share their risks together. For instance, if a twin chooses to smoke but receives an unequal effect, the unhealthy one should receive compensation from the healthy one. Therefore, ALE seems to encourage public insurance for those who make the same kind of gambles. More importantly, in so doing, ALE avoids the harshness objection because the victims of bad option luck will be compensated from public insurance. Also, ALE avoids the accusation of exploitation that non-smokers subsidize smokers (Segall, 2009: 48), because the prudent need not be compensated for the risky behaviour, conducted by the imprudent. Hence, ALE offers a plausible response to the harshness objection.<sup>85</sup>

### 5.5.2. The Pluralist Approach

The second way to respond to the harshness objection is to combine luck egalitarianism with *Sufficientarianism* or *Prioritarianism* (Voigt, 2007: 403-405; Segall, 2009: ch.5). As noted previously, egalitarians can admit that the ideal of equality is only one important dimension

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<sup>85</sup> Given the limited space and the purpose, I shall not pursue ALE any further. For a detailed critique of ALE, see (Segall, 2009: ch.3).

of justice and justice requires a balance between other moral considerations. Consequently, pluralist egalitarians can combine other considerations of distributive justice together to explain why the victims of bad option luck should be compensated. One way is to combine luck egalitarianism with Sufficientarianism (Segall, 2009; Barry, 2006; Casal, 2007). Sufficientarianism guarantees that each person has a minimum threshold of certain goods and that each person should not fall below certain basic thresholds. Therefore, luck egalitarianism combined with Sufficientarianism offers a robust response to the harshness objection in that whenever the victims of bad option luck are below a minimum threshold of certain goods, they have justice-based reason to ask for compensation.

Another way is to combine luck egalitarianism with Prioritarianism (Arneson, 2000). Prioritarianism claims that “one ought as a matter of justice to aid the unfortunate, and the more badly off someone is, the more urgent is the moral imperative to aid” (Arneson, 2000: 343). When so combined, luck egalitarianism can offer another robust response to the harshness objection by claiming that we have justice-based reason to rescue the victims of bad option luck as long as they are badly off.

However, the pluralist approach faces an objection. Some doubt that luck egalitarianism, when combining with Sufficientarianism or Prioritarianism, runs the risk of yielding the doctrine of luck egalitarianism under Sufficientarianism or Prioritarianism. Sufficientarianism (and Prioritarianism) “receives lexical priority over luck egalitarianism” (Knight, 2015: 123). For Knight, this might be an unpleasant concession for some luck egalitarians since the combination, either with Sufficientarianism or Prioritarianism, actually offers a replacement but not a complement for luck egalitarianism and, thus, luck egalitarianism remains “in a diminished, tie-breaking capacity” (ibid.). Knight’s view, however, is misleading. As Tan suggests, the core ideal of luck egalitarianism is best understood as “a grounding principle for distributive equality” but not as “a substantive principle of distributive equality itself” (2012: 106). While the luck/choice principle offers

a justificatory ground for distributive equality, it does not *necessarily* endorse any substantive distributive principle, that is, how and what to distribute among individuals. Luck egalitarianism leaves it open to the question of what the appropriate pattern and the metrics of distributive justice are. Hence, to adopt a hybrid approach — combining egalitarianism with Sufficientarianism or Prioritarianism — would not affect the core idea of luck egalitarianism (Arneson, 2000; Segall, 2007: 192-198, 2011: 262-264).<sup>86</sup>

### 5.5.3. The Principle of Stakes

While the notion of reasonable avoidability helps to extend the notion of personal responsibility in luck egalitarianism, some indicate that luck egalitarians must offer a clear principle of stakes to specify the relation between one's responsibility and the cost for which one is liable. As Serena Olsaretti (2009: 170) has indicated, “the question of the grounds of responsibility” should be distinguished from “the question of stakes.” The former concerns of what we can hold people responsible for; the latter, by contrast, concerns what costs should follow from responsible choices. Therefore, luck egalitarians may assert that although it is clear that the victim of purely bad brute luck should be liable for her imprudent choice, it is undetermined how much cost the victim should pay.

Olsaretti considers three principles of stakes that luck egalitarians might endorse: “the contextual approach,” “the consequentialist view” and “the desert view” (Olsaretti, 2009: 173-186). Olsaretti rejects the contextual view, preferring the consequentialist and the desert-based views.

The contextual approach assumes that “the context of choice is one in which individuals should enjoy as large as possible an area of freedom, provided the demands of

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<sup>86</sup> For Tan (2012: 125-126), Segall's approach (2007) might make the luck/choice principle redundant when defending luck egalitarianism by appealing to the notion of solidarity. Thus, Tan rejects Segall's view.

(responsibility-constrained) equality are met” (Olsaretti, 2009: 180). In other words, the contextual approach respects people’s negative freedom to a maximum degree and accepts whatever results from their exercising of freedom. The contextual approach seems to accept any consequence of people’s choice that they happen to encounter. However, the contextual approach is implausible for two reasons. First, “it does not seem true that any and all actual consequence of choices are justified” (Olsaretti, 2009: 176). Indeed, if what the contextual approach says is that any actual consequence of people’s choices should be accepted, then it says nothing more than the luck egalitarian doctrine that people should be held responsible for the outcomes of their choices. Second, for Olsaretti (2009:181-182), the contextual approach seems to import too many anti-egalitarian rights at the cost of luck egalitarian commitment to equality.

Instead, there are two alternatives: the consequentialist and the desert approach to stakes. The consequentialist approach claims that “the stakes of people’s choices should be just whatever stakes are required in order to promote independently desirable outcomes” (Olsaretti, 2009: 183).<sup>87</sup> The consequentialist approach seems to hold that the outcome of one’s imprudent choice is justified when it brings about desirable consequences. For instance, if the imprudent driver’s death makes more people aware of their driving, it seems that her death could be justified. The consequentialist approach, however, is problematic where the connection between one’s choice and the outcomes is irrelevant, or *pro tanto* unjustified. In the driver case, we do not think that the driver deserves his death even where the outcome is desirable, e.g. where many become more aware of their driving. The death is not the stake for which he should be liable. Moreover, the deserved consequence of one’s imprudent choices is simply irrelevant to the desirable outcomes it brings about. Hence, the consequentialist approach to stakes is implausible as well.

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<sup>87</sup> Peter Vallentyne proposes a similar view, see Vallentyne (2002).

On the other hand, the desert approach suggests that “the consequence of one’s choice are those that are ‘fitting’, or deserved, for the choice in question” (Olsaretti, 2009: 183-184). Thus, the desert approach might imply that, even if the driver’s choices are imprudent, he does not deserve all outcomes of his choices (Moriarty, 2018: 167). The desert approach to stakes, Olsaretti contends, places a constraint on the outcome of personal choices and is able to avoid the harshness objection in a way that it would not impose unduly harsh judgments about personal responsibility. For example, suppose a negligent driver crashed a tree and passed out by the road. Then, even if the driver should be fully responsible for his imprudent behaviour, he does not deserve to die on the road. However, the disadvantage of the desert approach is that it can only import “a proportionality constraint” on the consequence of one’s choice but is incapable of providing a full principle of stakes (Olsaretti, 2009: 184-185). What exactly one deserves is always determined by “the institutional context in which desert claims are made” (Olsaretti, 2009: 185). We need the institutional context so as to know what one deserves. Hence, the desert approach can serve as a constraint on our consideration of the consequence of choice but cannot answer what the exact costs that one should pay are.

Although the three approaches do not provide satisfying answers to the relation between responsibility and stakes, it is clear that even if the negligent driver is fully responsible for her imprudent choice, this does not necessarily follow that she should pay the full cost of her choice. The principle of stakes is the third way to respond to the harshness objection.

In sum, the harshness objection that social egalitarians arise has facilitated the content of luck egalitarianism. As we have seen, it is misleading to assert that luck egalitarians will leave the negligent driver, who is liable for his imprudent behaviour according to a standard of reasonable avoidability, dying on the road. Luck egalitarians can reply to the harshness objection in the above three ways.

## 5.6. Conclusion

I have introduced the core ideas of luck and social egalitarianism, examined three objections that social egalitarians pose to luck egalitarians, and illustrated how luck egalitarians could respond to each objection. As we have seen, when luck egalitarians affirm a sufficientarian, or a prioritarian, threshold, the distinction between luck and social egalitarianism has been largely lessened. Rather, as many have proposed, the two approaches to the ideal of equality could be reconciled (Stemplowska, 2011; Tomlin, 2014; Lippert-Rasmussen, 2018a; Mole & Parr, 2019; Mulkeen, 2020). By reviewing the social egalitarian critique and how luck egalitarians can reply to these criticisms, we have a better understanding of the nature of egalitarian justice.

Besides, the survey is necessary for my core argument in Chapter 6, because exploitation is inherently an inequalitarian notion. Given this, when identifying the injustice of exploitation, we need to have a clear sense of what egalitarianism is and the best conception of equality. The survey, then, provides an understanding of egalitarian justice and, therefore, how egalitarians could perceive the injustice of exploitation. In Chapter 6, I first introduce two distinct ways to perceive the injustice of exploitation, namely, the Free-standing approach and the Derivative approach. The Derivative approach, endorsed by Cohen and Roemer, claims that exploitation is unjust so long as it stems from background injustice. In contrast, the Free-standing approach states that exploitation is unjust on its own, regardless of its history. Based on the distinction, I shall argue that, because exploitation may arise under the luck egalitarian agenda, the luck egalitarian treatment of the injustice of exploitation — the Derivative approach — is incomplete; and the Free-standing approach is a better alternative than the Derivative approach to perceive the injustice of exploitation.

## 6. What Makes Exploitation Unjust: Against the Luck Egalitarian Understanding

The aim of Chapter 6 is to answer why exploitation is unjust for egalitarians. Although it is clear that exploitation is morally wrongful, it remains vague how to identify the injustice-making feature of exploitation and why exploitation is unjust according to egalitarianism. For contemporary egalitarians, exploitation represents a specific category worthy of their attention because a society of equals cannot be an exploitative one. Thus, it is important that contemporary egalitarians should be able to deal properly with exploitation; otherwise, their egalitarian proposal is incomplete. To be complete, any theory of egalitarian justice has to pass what I shall call *the exploitation objection*, which asserts that an account of egalitarian justice that fails to include a plausible account of the injustice of exploitation is inadequate. I then scrutinise whether or not luck egalitarians can respond to exploitation successfully.<sup>88</sup> The core argument of Chapter 6 and the whole thesis is to contend that luck egalitarians fail to deal properly with exploitation because certain forms of exploitation could arise in a society that honours luck egalitarian criteria of justice, that is, no one suffers unchosen disadvantages. The luck egalitarian treatment of exploitation, thus, is *incomplete* and luck egalitarians need another principle of non-exploitation to respond to exploitation. My aim is moderate in that, by posing the exploitation objection to luck egalitarianism, it will deepen our understanding of egalitarian justice. How we perceive the injustice of exploitation, then, will influence our understanding of egalitarian justice in general.

Chapter 6 starts by proposing two distinct ways to perceive the injustice of exploitation, namely, the Derivative approach and the Free-standing approach. Roughly

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<sup>88</sup> I focus on luck egalitarianism because it remains an important, influential account of distributive justice. Even if other accounts of distributive justice may respond to exploitation perfectly, it is beyond my concern here.



stated, the former holds that exploitation is unjust so long as it stems from a prior background injustice; the latter holds that exploitation is unjust on its own, regardless of its history. Leading luck egalitarians, such as Cohen (1995), Roemer (1982b, 1998), Arneson (2013) and Steiner (1984, 1987, 1994), endorse the Derivative approach. I then illustrate how exploitation can arise even under just background conditions, via just steps, and, therefore, why the luck egalitarian treatment of exploitation is incomplete. Having argued the incompleteness of the Derivative approach, at the end of this chapter, I specify the content of the Free-standing approach pertinent to my account of exploitation.

The structure of Chapter 6 proceeds as follows. Section 1 contrasts the Derivative approach with the Free-standing approach. In section 6.2., I indicate that luck egalitarians endorse the Derivative approach and how exploitation may arise under the luck egalitarian agenda, via just steps. Consequently, the Derivative approach, endorsed by some luck egalitarians, is incomplete. Section 6.3. proposes and explains the Free-standing approach in terms of my account of exploitation. Section 6.4. is the conclusion.

### **6.1. The Injustice of Exploitation: Derivative or Free-standing**

In general, there are three ways in which exploitation and inequality may be related to each other, namely: exploitation generates inequalities,<sup>89</sup> inequalities generate exploitation, and exploitation is, *in itself*, a form of inequality. Exploitation could be unjust in the above three senses. With respect to the case that exploitation generates inequalities, as Andrew Mason indicated, “an act can be unjust in terms of its [unjust] effects even if it is not intrinsically unjust” (2015: 136). Even if exploitation is not in itself unjust in the sense that the exploitee suffers no unfair disadvantage, exploitation could be unjust in that it generates other kinds

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<sup>89</sup> For a discussion of how exploitation generates inequalities. See Hillel Steiner (2010).

of social injustice. However, in this chapter, I shall focus on the last two connections and leave the first one to Chapter 7. The last two connections then provide distinct ways to formulate the injustice of exploitation: free-standing and derivative.

Both the free-standing view and the derivative view consist of *a causal claim of exploitation, a normative claim of the injustice of exploitation, and an egalitarian claim of when exploitation is unfair*.<sup>90</sup> Roughly speaking, the derivative view, proposed by Cohen (1995) and Roemer (1998), holds that it is unjust for A to take advantage of B's unchosen disadvantage to gain benefits. In contrast, I hold the free-standing view, which claims that it is unjust for A to take advantage of B's chosen or unchosen disadvantage to extract wrongful benefits. This distinction represents the significant difference between the luck egalitarian understanding, and my understanding, of the injustice of exploitation. As we shall see, the fundamental disagreement between the two views lies in whether or not the source of B's disadvantage is relevant for assessing whether A's advantage-taking behaviour is unjust (the egalitarian claim).

### 6.1.1. Exploitative as Derivative Injustice

*Exploitation as derivative injustice* consists of three claims: a causal claim, a normative claim, and an egalitarian claim. First, regarding the causal claim, the Derivative approach holds that the presence of exploitation depends on background injustices, which implies that whenever these background injustices have been eliminated, exploitation fades away as well. The Derivative approach, therefore, endorses *the historical account of exploitation*, that is, a prior injustice is necessary for the occurrence of exploitation. Moreover, since the Derivative approach adopts the historical account of exploitation, it is a form of the

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<sup>90</sup> See Cohen (1995: ch.8), for his brilliant distinction between a causal claim and a normative claim, which I shall discuss later.

process-focused view, claiming that exploitation occurs if and only if A takes advantage of B's suffering from an injustice.

Second, the normative claim concerns whether or not exploitation is a distinct injustice that cannot be reducible to another kind of injustice, and whether the injustice of exploitation must reflect background injustice. As I shall discuss later, Roemer and Cohen differ in the normative claim of exploitation. Roemer holds that although exploitation is an injustice, it is a secondary injustice that derives from a primary unjust background inequality. For Roemer, the injustice of exploitation is reducible to another injustice. In explaining why exploitation is unjust, the unjust character of exploitation stems from another injustice. In a word, for Roemer, exploitation is not an independent source of injustice. In contrast, Cohen insists that exploitation is a distinct injustice, which cannot be reducible to another injustice. The injustice of exploitation is normatively distinct from background injustice, even if exploitation stems from background injustice. In a word, for Cohen, exploitation is a distinct form of injustice. What they have in common is that exploitation is unjust when and because it reflects the injustice of background conditions.

Third, the distinctive feature of the Derivative approach concerns its account of when exploitation is unjust. According to the Derivative approach, if A extracts *more* benefits from B by taking advantage of B's *chosen* disadvantage, then her advantage-taking behaviour is not unjust. However, it would be unjust if A extracted more benefits from B by taking advantage of B's *unchosen* disadvantage. The Derivative approach thus adopts a historical account of distributive fairness: that is, the cause of B's disadvantage is relevant for assessing whether A's advantage-taking behaviour is just or unjust (Ferguson & Steiner, 2018: 535-536). The Derivative approach, then, represents the luck egalitarian understanding of the injustice of exploitation in the sense that the luck/choice distinction is employed to assess whether A's taking advantage of B's disadvantage is just or unjust, exploitative or non-exploitative.

### 6.1.2. Exploitation as Free-standing Injustice

Likewise, *exploitation as free-standing injustice* consists of three claims. First, regarding the causal claim, the Free-standing approach employs an ahistorical account of exploitation. That is, the presence of exploitation could but need not depend on a prior background injustice.<sup>91</sup> Although in real-world cases, exploitation often stems from background injustice, it need not do so. In other words, the Free-standing approach acknowledges that exploitation may occur under just background conditions, via just steps.

Second, concerning the normative claim, the Free-standing approach rejects the view that the injustice of exploitation can be subsumed into another social injustice. Rather, with Cohen, the Free-standing approach insists that exploitation is a distinct injustice in that the injustice of exploitation is not reducible to another kind of injustice. Moreover, for the Free-standing approach, exploitation is unjust, even if it does not reflect the injustice of background conditions. The normative claim is one of the fundamental differences between the Derivative and the Free-standing approach.

Third, and more importantly, the Free-standing approach claims that it is unjust for A to take advantage of B's disadvantage to extract wrongful benefits, regardless of the cause of B's disadvantage. Contra the Derivative approach, the Free-standing approach holds that the source of B's disadvantage is *irrelevant* for assessing whether or not A's advantage-taking behaviour is just or unjust. The Free-standing approach, then, contends that A's using her superior advantage over B to extract wrongful benefits from B is unjust and inequalitarian. Exploitation is, in itself, unjust, regardless of its history. While the Derivative approach maintains that exploitation that does not reflect background injustice

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<sup>91</sup> For a detailed explanation, see Chapter 4.

is not unjust,<sup>92</sup> the Free-standing view will treat any form of exploitation as injustice, even if they stem from just background conditions via just steps. To put it differently, the fundamental difference between the two approaches is whether or not the source of B's disadvantage is relevant for determining the injustice of exploitation. The core argument in this chapter, then, is to reject that the source of B's disadvantage matters in determining the injustice of exploitation. Exploitation, thus, is a *free-standing* injustice in the sense that A's taking advantage of B's chosen or unchosen disadvantage to extract wrongful benefits constitutes exploitation and is unjust.

So far, I have contrasted exploitation as free-standing injustice with exploitation as derivative injustice. While prominent luck egalitarians employ the Derivative approach, I adopt the Free-standing approach. I believe that Cohen (1995), Roemer (1982, 1998), Arneson (2013, 2016) and Steiner (1984, 1987, 1994, 2010, 2018) hold the Derivative approach, while Marx (1875, 1990) and Mark Reiff (2013) adopt the Free-standing approach.<sup>93</sup> The contrast I made will highlight the difference between the luck egalitarian understanding, and my understanding, of the injustice of exploitation. To bear the contrast in mind, now I shall turn to the luck egalitarian understanding and examine how luck egalitarians can plausibly respond to exploitation.

## 6.2. Luck Egalitarianism and Exploitation

This section examines how luck egalitarians, especially Cohen and Roemer, deal with the injustice of exploitation. As Levine points out, “any revival of socialist and Marxist theory

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<sup>92</sup> Such exploitation may be unjust for other reasons.

<sup>93</sup> Whether Marx regards exploitation as unjust has been a controversial issue. Although I believe Marx is opposed to moralism, most maintain that Marx has a theory of justice, of which he was not aware. I would not engage the controversy here. Even if Marx regards exploitation as injustice, he will hold the Free-standing approach. See Marshall Cohen (2014), G. A. Cohen (1983b, 1995: 11, fn.14), Allen Wood (2004: ch.9) and John Rawls (2008: 317-372).

in the years ahead will have to resume where analytical Marxism left off” (2012: 170). My aim, then, is to indicate how exploitation may occur under the luck egalitarian agenda and, therefore, the luck egalitarian understanding is incomplete. I first introduce Roemer’s and Cohen’s luck-egalitarian accounts of exploitation and explain in what sense they adopt the Derivative approach. Then I distinguish between brute-luck, and option-luck, exploitation. Brute-luck exploitation stems from unjust background conditions, while option-luck exploitation stems from just background conditions. More importantly, I argue that the luck egalitarian understanding can only deal with brute-luck exploitation but fails to notice the possibility of option-luck exploitation. Moreover, I shall examine how luck egalitarians can plausibly respond to option-luck exploitation and why these responses do not succeed. Hence, the luck egalitarian understanding of the injustice of exploitation is incomplete, and a principle of non-exploitation is needed.

### 6.2.1. Analytical Marxism: A Sophisticated Response to Exploitation

Luck egalitarians have been accused by social egalitarians of missing the point of equality because they focus on how to distribute goods fairly among individuals. “The injustice of exploitation”, as Young indicates, “cannot be eliminated by redistribution of goods, for as long as institutionalized practices and structural relations remain unaltered, the process of transfer will re-create an unequal distribution of benefits” (2011: 53). What Young suggests is that structural exploitation would not be eliminated solely by allocating *consumption goods* among the exploited; therefore, luck egalitarians fail to deal with oppression and exploitation properly. However, Young’s view is problematic because even if the redistribution of consumption goods among individuals cannot eliminate exploitation, an equal distribution of productive assets seems to work. Cohen and Roemer—two leading Analytical Marxists—did offer a substantive account of capitalist exploitation and aim at

eliminating exploitation by redistributing productive assets and resources among individuals. More importantly, for them, since the maldistribution of productive assets is a matter of bad brute luck, it is unfair and should be eliminated. Therefore, contra the common impression that luck egalitarians are not good at dealing with relational inequality, Cohen's and Roemer's treatment to exploitation show that they can.

In what follows, we could distinguish three Marxian accounts of capitalist exploitation: *the traditional view*, *the Roemerian turn* and *Cohen's mutually constructed thesis*. Both Cohen and Roemer attempt to revise the Traditional view. The Traditional view holds that capitalist exploitation refers specifically to the unequal exchange of labour-power from labourers to capitalists, which is formulated as *the Unequal Exchange Objection*.<sup>94</sup> The objection is held by some Marxists as the core idea of capitalist exploitation. For them, capitalist exploitation is unjust, just because the exchange between capitalists and labourers is unequal. Given the prevailing rule in an *ideally* competitive market is equal exchanges, the exchange between labourers and capitalists is unjust in that it violates the prevailing rule of equal exchanges.

The Unequal Exchange Objection, however, is problematic for Cohen and Roemer. For them, capitalist exploitation is conceptually associated with the maldistribution of productive assets. What makes the unequal flow from labourers to capitalists possible is the initial maldistribution of means of production and external resources. Hence, Roemer contends that capitalist exploitation — the unequal flow — is only *morally* meaningful insofar it reflects a more basic concern: namely, a concern about the initial maldistribution of means of production within a society (1997: 147). Note that there are two distinct claims here. First, he regards the unequal exchanges between capitalists and labourers and the initial inequality of productive assets as analytically distinct. So, there could be unequal

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<sup>94</sup> We should be careful that whenever Cohen and Roemer talk about capitalist exploitation, it refers to the unequal flow from labourers to capitalists.

exchanges occurring between parties without any background inequality of resources, and, vice-versa, inequalities in resources need not causally generate any unequal exchanges between parties. Second, and more importantly, he believes that the initial inequality of ownership of productive assets that generate class relationships is morally more fundamental to Marxism than the worry about exploitation — the unequal labour exchange. Thus, Marxists, Roemer concludes, should shift emphasis from the Unequal Exchange objection to the inequality of productive assets.

The Roemerian turn, thus, is an attempt to subsume the concept of exploitation into the concept of distributive justice (Callinicos, 2000: 66). This is best illustrated by Roemer's words: "when exploitation is an injustice, it is not because it is exploitation *as such*, but because the distribution of labor expended and income received in an exploitative situation are consequences of an initial distribution of asset that is unjust" (Roemer, 1998: 57, my italics). For Roemer, exploitation — the unequal flow — is unjust, not because it has any normative implication in its own right; instead, exploitation obtains its unjust character only when and because it stems from a prior injustice, that is, the injustice of the maldistribution of productive assets and resources. Roemer, then, makes a causal claim that exploitation stems causally from background injustice and a normative claim that the injustice of exploitation is reducible to background injustice.

Moreover, since not every kind of unequal flow of goods between parties, in itself, constitutes exploitation, Roemer proposes the conceptual connection that the unequal flow only amounts to exploitation if it stems from the maldistribution. For instance, gifting between friends involves an unequal exchange of value, but gifting is not exploitation so long as it does not reflect any background injustice. However, exploitation only arises if it stems from background injustice. Therefore, the presence of exploitation — the unequal flow — depends on a prior background injustice. So understood, Roemer employs the Derivative approach.



Let us turn now to Cohen's version. Contra Roemer, Cohen endeavours to rescue the significance of exploitation, either as an important social phenomenon or as a distinct source of injustice, though he would agree with Roemer's emphasis of the role of background injustice played in capitalist exploitation. Now, for Marxists, there are three answers to the question of the injustice of exploitation:

- (1) ***The Traditional view***: the injustice of exploitation lies in "the forced extraction of product itself" (Cohen, 1995: 197).
- (2) ***The Roemerian view***: the injustice of exploitation lies in "the fact that workers lack access to physical productive resources" (ibid.).
- (3) ***Mutually Constructed Thesis***: then, Cohen suggests the third answer: "*The flow is unjust because it reflects an unjust division of resources which is unjust because it tends to produce precisely such a flow*" (Cohen, 1995: 199, his italics).

As specified above, the Traditional view ignores the importance of the initial maldistribution, while the Roemerian view holds the Derivative approach. Cohen, therefore, proposes the Mutually Constructed thesis to distinguish himself from (1) and (2). Now the Mutually Constructed thesis appears to be a combination of (1) and (2), but it is actually a reconciliation. For Cohen, the unequal flow between capitalists and workers is unjust if and only if "it occurs for the *wrong reason*" (1995: 199). Hence, if an unequal exchange between parties reflects only people's different preferences, then the flow is not unjust. Thus, gifting is not exploitation because it does not reflect the wrong reason but people's different preferences. On the other hand, an unequal transfer from labourers to capitalists is unjust, when and because it stems from an unjust maldistribution of external resources. It is the injustice of the maldistribution that the unequal flow reflects makes exploitation unjust.

So far, Cohen's view is no different from Roemer's. What really distinguishes Cohen's view from Roemer's rests on Cohen's interpretation of the normative role of the maldistribution of productive assets in the context of exploitation. While Roemer regards the maldistribution as an independent issue and has its own normative implication, Cohen argues that, in order to make sense of the maldistribution in the context of exploitation, we should distinguish between the issue of "an unequal asset distribution" as such and "its [the maldistribution] *tendency* to induce a forced product flow" (1995: 200, my italics). For Cohen, the maldistribution is unjust in two distinct senses. On the one hand, as Roemer insists, the inequality of productive assets, itself, constitutes a form of distributive injustice; on the other hand, the fact that the maldistribution *tends to* generate exploitation constitutes another form of injustice. The second meaning of injustice of the maldistribution, however, has been ignored by Roemer. Regarding the relationship between exploitation and the maldistribution, what matters is its tendency to generate the forced extraction, *rather than the inequality as such*. To be sure, Cohen does not deny that the maldistribution of productive assets, in itself, is unjust; rather, its salient relevance as regards exploitation is its tendency to generate the unequal flow.

Cohen proposes the case of gun inequality to clarify why it is the tendency to generate exploitation, rather than the inequality of productive assets as such, that matters (1995: 198). Suppose in a region where people can possess guns legally and, as time goes, the inequality of guns arises and has caused death. Now people call for an equal distribution of guns because supposedly the equal distribution of guns brings about fewer or no killings due to the balance of power. The gun case suggests that what matters at stake is not that guns are not equally allocated among citizens, but that the injustice of the gun inequality lies in its tendency to pose a threat and cause death. Hence, in the gun case, we demand the equal distribution of guns not because of the inequality as such is wrong, but because the equal distribution leads to fewer or no killings. It is then clear that in the gun case, what

really matters is that the maldistribution of guns tends to do harm and cause many deaths. By the same token, with respect to the maldistribution in the context of exploitation, what matters is not *primarily* that productive assets are not equally distributed among individuals, though the inequality as such is a form of distributive injustice. Rather, it is the unequal flow — exploitation — that the maldistribution facilitates makes it unjust.

Now, in Cohen's view, maldistribution and exploitation are two distinct forms of injustice and have different normative orders. Since what makes the maldistribution unjust in a relevant way is its tendency to generate exploitation, it is the unequal flow that remains the "normatively fundamental injustice" (Cohen, 1995: 200). On the other hand, the inequality of productive assets is a secondary injustice from a normative point of view. As Cohen indicates, although the maldistribution is "causally fundamental in the explanation of the possibility and the occurrence of unjust transfers", it "would remain a normatively secondary (though causally primary) wrong" (1995: 199). In a nutshell, although the maldistribution and exploitation are both fundamentally unjust, exploitation is the primary injustice while the maldistribution remains the secondary injustice because what we care most is the unjust effect — that is, exploitation — that the maldistribution tends to generate. So understood, the injustice of exploitation, for Cohen, is more primary than that of the maldistribution.

Besides, the inequality of productive assets remains the secondary injustice because the effect of the allocation of productive assets is very different from that of consumption goods. While consumption goods are designed to satisfy a specific need or want, the purpose of productive assets is to generate consumption goods. If consumption goods must be generated before being consumed by a being, then those who possess productive assets will have the power against those have-nots to decide to how to organise economic activities and how to allocate consumption goods. Therefore, the distribution of means of production and the productive structures are logically prior to the issue of the allocation

of consumption goods (Marx, 2000: 610-616; Forst, 2014: ch.1, 2013: 42-45). On the other hand, the unequal distribution of productive assets would not directly affect one's well-being as that of consumption goods. While an individual's well-being is reduced when she has fewer consumption goods to meet her needs, the inequality of productive assets has no such direct effects. For instance, workers, by definition, do not possess means of production, but skilled workers could have a high level of well-being due to their abundant salary. If that is the case, to be excluded from accessing productive assets is objectionable only when it generates domination, exploitation, and other wrongs among individuals. Their different functions, and the bad effects they tend to generate, explain why the allocation of productive assets should be differentiated from that of consumption goods.

Now Cohen offers a sophisticated version of the luck egalitarian understanding of the injustice of exploitation. First, for Cohen, exploitation stems *only from* background injustice (Otsuka, 2010: 222). This is the causal claim. Second, and more specifically, *exploitation is unjust if and only if it reflects the unjust maldistribution of means of production*. As Cohen wrote, "the crucial question for exploitation concerns the justice of the distribution of the means of production" (1988: 234). Hence, exploitation is a form of historical injustice in that we can be traced to a prior background injustice. For him, exploitation and the maldistribution are two distinct forms of injustice and, therefore, exploitation is not reducible to background injustice. This is the normative claim. As we shall see, Cohen states that "A person is *exploited* when unfair advantage is taken of him, and he suffers from (bad) *brute luck*" (1989: 908, his italics; 1995: 151). This represents the egalitarian claim, endorsed by the Derivative approach, that the source of B's disadvantage matters in determining whether A's advantage-taking behaviour is just or unjust. Hence, Cohen's Mutually Constructed thesis employs the Derivative approach.

Thus far, I have introduced how Cohen and Roemer perceive the injustice of exploitation. For them, exploitation is historical in that it must stem from background

injustice; more importantly, the unequal flow—exploitation—is unjust if and only if it reflects the injustice of background conditions. Moreover, their difference lies in the normative priority between the injustice of exploitation and background conditions. On Roemer's version, exploitation is a secondary injustice, whose injustice derivates from the maldistribution of productive assets. On Cohen's version,<sup>95</sup> exploitation is a primary injustice, and it is unjust because exploitation reflects the maldistribution of productive assets (Vrousalis, 2014: 156). The maldistribution is a secondary injustice in the context of exploitation because what matters is its tendency to generate exploitation. As a result, for Cohen, the injustice-making features lie both in exploitation—the unequal flow—and the maldistribution. Therefore, I term his view mutually constructed. Moreover, since to be exploited and excluded from access to productive assets is beyond one's control and thus a matter of bad brute luck, luck egalitarians will condemn the injustice of exploitation and the maldistribution (Barry, 2006: 94). Cohen will demand an equal distribution of means of production and external resources among citizens as well.

### 6.2.2. The Force of Cleanly Generated Capitalist Relationships

The above discussion has dealt with the causal claim, and the normative claim, of the Derivative approach. In this section, I explicate the egalitarian claim of the Derivative approach by presenting a revised version of Cohen's cleanly generated capitalist relationships. Let us consider *Cohen's cleanly generated capitalist relationship*.

In a cleanly generated capitalist relationship, there is a capital-lacking worker on one side and a capital-endowed capitalist on the other, but the relationship is cleanly generated in that here the differential endowment is the upshot of a history which begins with equal capital

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<sup>95</sup> It is important to note that what I have concluded is Cohen's early position on the relationship between exploitation and background injustice. His view might change over time given his shift from a focus on Marxism to his later luck egalitarian phase.

endowment in a context of self-ownership and which reaches its capitalist stage as a result of no force or fraud but of the greater frugality and/or talent of those who come to have all the capital. (Cohen, 1995: 161)

In Cohen's *Self-ownership, Freedom, and Equality*, Cohen aimed to clarify Marxist political philosophy in relation to the notion of self-ownership, rather than offering a thorough luck egalitarian view. Therefore, the original case of cleanly generated capitalist relationship has to be revised for it to be relevant to the issue between luck and social egalitarianism. Now consider a revised version of Cohen's cleanly generated capitalist relationship:

In a cleanly generated capitalist relationship, there is a capital-lacking worker on one side and a capital-endowed capitalist on the other, but the relationship is cleanly generated in the luck-egalitarian sense that the ultimate differential endowment is the upshot of a history which begins with equal capital endowment and identical talents between them in a context of self-ownership and which reaches its capitalist stage as a result of no force or fraud but of the choice and/or good option luck of those who come to have all the capital.<sup>96</sup>

The revised version of Cohen's cleanly generated capitalist relationship can be further explicated by the luck/choice principle. As Dworkin specifies, "[i]t is a ruling principle of equality, we have decided, that it is unjust when some people lead their lives with less wealth available to them, or in otherwise less favourable circumstances, than others, not through some choice or gamble of their own but through brute bad luck" (2002: 347). The Derivative approach, then, holds that the maldistribution of productive assets and exploitation is a matter of bad brute luck because the victims of exploitation and the maldistribution are not liable for their being exploited and excluded from access to

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<sup>96</sup> This is a revised version of Cohen's cleanly generated capitalist relationship in that I suppose that the capital-lacking worker and the capital-endowed capitalist have identical talents. Their ultimate difference can only come from their differential choice and option luck. In so revising, I suppose the role of brute luck has no influence on their ultimate difference, and therefore the revised capitalist relationship fits the luck egalitarian principle.

productive assets. Given that luck egalitarianism aims to neutralise the effect of brute luck whenever possible, luck egalitarians will not only compensate for the exploited but, more importantly, seek an initially equal distribution of means of production and resources among individuals to eliminate exploitation.

Luck egalitarians attempt to eliminate inequalities by an equal distribution of certain metrics, such as Cohen's equal access to advantage (1989), Dworkin's resourcism (1981), and Arneson's equal opportunity for welfare (1989). As Dworkin explicitly indicates, "[i]f the central features of equality of resources were realized, then *class* would disappear, at least over time" (2002: 345, his italics). Likewise, Cohen notes that "A person is *exploited* when unfair advantage is taken of him, and he suffers from (bad) *brute luck* when his bad luck is not the result of a gamble or risk which he could have avoided" (1989: 908, his italics). If exploitation involves one's unfair advantage to be taken by another, this suggests that given an initially equal distribution of 'equal access to advantage', exploitation would be eliminated. More importantly, luck egalitarians seek to extinguish relational inequalities, such as exploitation and class, by correcting background injustice. For Cohen and Roemer, since they hold that exploitation stems from background injustice, the neutralisation of background injustice follows the correction of relational inequality. Hence, Cohen will not take the unequal flow in cleanly generated capitalist relationships as exploitation.

Consequently, given an initially equal distribution of certain metrics among individuals, irrespective of whether these metrics are resources, welfare, capacities, or a hybrid approach, the ultimate inequalities or the capitalist relationships are cleanly generated in the sense that they are a result of people's differential effects and (good or bad) option luck, for which they should be liable. After the initial equal distribution of certain metrics, the resulting inequalities between individuals, luck egalitarians presume, reflect only people's differential outcomes of option luck, either because some are willing to spend more time to work than leisure (people's differential preferences), and/or because

some are willing to invest in high-risk, high-paying projects (their different ambitions). Hence, for Dworkin, given an initially equal distribution of resources and the envy test, the following unequal outcomes, when they are generated by voluntary choices, are not unfair (Anderson, 2008: 243-246).

The force of the cleanly generated capitalist relationships, then, rests on the fact that, since any inequality generated between individuals results only from their voluntary choices and differential preferences, and since, both for luck and social egalitarians, people should be substantively responsible for the cost of their genuine choice, no one can complain justifiably that the upshot is unfair on egalitarian reason.<sup>97</sup> The ultimate capitalist relationships, even if they are unequal and dreadful for some Marxists, are not unfair for luck egalitarians. The cleanly generated capitalist relationships illustrate the egalitarian claim of the Derivative approach.

### **6.2.3. Brute-Luck and Option-Luck Exploitation**

Having clarified the egalitarian claim, endorsed by the Derivative approach, I then distinguish between brute-luck and option-luck exploitation, which is meant to distinguish between exploitation occurring before, and after, an initially equal distribution of productive assets and resources. Once the distinction has been established, I pose two objections to the Derivative approach. First, although luck egalitarians can effectively eliminate brute-luck exploitation, they cannot deal with the presence of option-luck exploitation. Second, and more importantly, I object to the egalitarian claim, endorsed by the Derivative approach, that the cause of B's disadvantage matters in determining whether A's advantage-taking behaviour is just or unjust, exploitative or non-exploitative. In other

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<sup>97</sup> Note that the later Cohen will think that the outcome of the cleanly generated capitalist relationships is unfair and problematic. See Cohen (2011: ch.6).



words, I maintain the Free-standing view that A's taking advantage of B's, fair or unfair, disadvantage to extract wrongful benefits, is unjust and inequalitarian. Hence, the Derivative approach is incomplete, and luck egalitarians need a free-standing principle of non-exploitation. Let us explore how option-luck exploitation arises in a just society.

Exploitation may stem from just background conditions, via just steps. More specifically, exploitation can be cleanly generated as a result of differential outcomes of option luck. Even if the initial distribution of resources is equal, and the subsequent inequalities are not unfair because they reflect people's differential choices, exploitation may nevertheless occur. Now exploitation can be divided into two types relative to the brute/option luck distinction, namely, *brute-luck exploitation* and *option-luck exploitation*. Brute-luck exploitation refers to a situation in which A presses her unfair advantage against B's unfair disadvantage to extract more benefits. In contrast, option-luck exploitation refers to a situation in which A presses her fair advantage against B's fair disadvantage to extract wrongful benefits. The core difference between brute-luck and option-luck exploitation lies in whether A's advantage and B's disadvantage are generated from just or unjust background conditions, via just or unjust steps, according to the luck egalitarian agenda.<sup>98</sup> The distinction is meant to specify the site where exploitation takes place and will help to clarify the object of our discussion. In my view, while luck egalitarians can effectively eliminate brute-luck exploitation by an initially equal distribution of certain metrics, they fail to notice the possibility of option-luck exploitation, not to mention how to cope with it effectively. Let us examine how option-luck exploitation arises.

In general, exploitation occurs when and because A possesses relatively superior, and sufficient, agency than B's that A can take advantage of B's inferiority to extract wrongful benefits. That is, the Relational condition has to be satisfied for the occurrence of

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<sup>98</sup> To be sure, luck egalitarians differ slightly in what counts as fairness, but most, if not all, endorse an interpretation of the brute/option luck distinction to construct their fairness view. Their different interpretations of the brute/option luck distinction would not affect my argument here.

exploitation, brute-luck or option-luck. The Relational condition could be met in either a just, or unjust, world, as determined the luck egalitarian agenda. Therefore, it is not surprising that the asymmetry of advantage between parties may occur even under the luck egalitarian agenda. Consider the following two cases that happen after an initially equal distribution of certain metrics and endowments.

*Greedy Mountain Rescuer.* Bob enjoys wildlife and loves to climb alone; Allen loves hunting. One day, Bob is stranded in the mountain because he ignores the weather forecast; but somehow, Allen roams the mountain and offers to rescue Bob for an exorbitant price, say, ten times the cost of one rescue by the national rescue team. Bob accepts the deal, and Allen exploits Bob.

*The Priceless Painting.* Suppose Alex and Betty are in a just world where people have a just share of resources. One day, Betty is driving with a priceless painting in her open-top car; she has worked hard and saved for many years to buy the painting. Suppose it then looks like it is going to rain. Fortunately, Betty sees Alex. He has a solution to protect the painting. Suppose he has a completely reliable waterproof cover bought from a store for 1 pound. Alex offers to help, but only if Betty gives him 80% of the worth of the painting. Betty accepts, and Alex exploits Betty.

The two cases are clearly exploitative and cleanly generated. If so, option-luck exploitation may occur even under a just society. Exploitation can easily arise whenever one obtains superior advantage than another. For instance, as Dworkin notes, “So as time passes some citizens will grow richer than others” as a result of option luck and differential preferences (2002: 346). *Greedy Mountain Rescuer* and *The Priceless Painting* illustrate how option-luck exploitation may occur in a just society. In *Greedy Mountain Rescuer*, the point is that there

are just too many contingent occasions in which people, even with an initially equal distribution of resources and endowments, can easily find opportunities to exploit others. In *The Priceless Painting*, A's superior advantage compared to B has nothing to do with brute luck and, therefore, the case is cleanly generated for luck egalitarians. In either case, option-luck exploitation appears even when material inequality has been corrected. The Derivative approach is incomplete.

#### 6.2.4. The Incompleteness of The Derivative Approach

The presence of option-luck exploitation rejects the three claims — the causal, the normative, and the egalitarian claim — of the Derivative approach and, therefore, illustrates the incompleteness of it. Let us consider the causal and the normative claim of the Derivative approach first. For the Derivative approach, exploitation must stem causally from background injustice (the causal claim), and exploitation is unjust because it reflects background injustice (the normative claim). The presence of option-luck exploitation, however, has rejected both claims. The fact that exploitation can arise from just background conditions, via just steps, illustrates that exploitation needs not to stem from background injustice (the rejection of the causal claim) and, therefore, as I will explain later, exploitation can be unjust even if it does not reflect the injustice of background conditions (the rejection of the normative claim). Thus, the neutralisation of background injustice is not always sufficient to eliminate exploitation. The Derivative approach then is incomplete in the senses that it mistakenly adopts the historical account of exploitation and fails to note that exploitation can be unjust even if it does not reflect background injustice.<sup>99</sup>

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<sup>99</sup> Note that since Cohen holds that exploitation is unjust if and only if it reflects the wrong reason (1995: 199), he may maintain that option-luck exploitation is unjust because it reflects the unjust treatment that A imposes superior advantage upon B to extract more benefits.

Now let us consider the egalitarian claim of the Derivative approach. The egalitarian claim could be summarised as follows:

- (1) Cleanly generated capitalist relationships are not unfair.
- (2) Therefore, the inequality of agency between A and B is not unfair.
- (3) Therefore, A's taking advantage of B's fair disadvantage to extract more benefits is just and not exploitative.<sup>100</sup>

Here comes my objection to the egalitarian claim of the Derivative approach. I reject (3) because the cause of B's disadvantage is irrelevant for determining whether A's advantage-taking behaviour is just or unjust, exploitative or non-exploitative. Notice that the egalitarian claim is actually combined with the causal claim in the Derivative approach. First, consider the causal claim. As I have mentioned in section 6.1.1., since the Derivative approach is a form of the process-focused view — holding that exploitation occurs when A takes advantage of B's unchosen disadvantage to extract benefits — the luck/choice distinction is employed to determine when A's advantage-taking behaviour constitutes exploitation. However, the presence of option-luck exploitation has illustrated that to be exploitation, the fairness of B's disadvantage and A's advantage is irrelevant. Exploitation may take place between individuals, whose (dis)advantages are fair according to a principle of luck egalitarianism.

On the other hand, the egalitarian claim, held by the Derivative approach, insists that it is *not unjust* for A to take advantage of B's *chosen* disadvantage, and the source of B's disadvantage is relevant for the injustice of A's advantage-taking behaviour. The Derivative approach, however, is misleading as well. A acts unjustly even when A takes advantage of

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<sup>100</sup> See Wolff (2018: 183-185), for his discussion of a cleanly generated capitalism.

B's *chosen* disadvantage to gain benefits. In (3), the fundamental injustice rests on the unequal treatment that A presses her superior advantage against B to extract wrongful benefits. A fails to treat B equally in (3), even if A's advantage and B's disadvantage are fair according to a doctrine of luck egalitarianism. It is one thing to say that the resulting inequality from purely option luck is fair, another to say that A's taking advantage of B's chosen disadvantage to extract wrongful benefits, is not unjust. Even if the resulting inequality is fair according to luck egalitarianism, this does not follow that A's exploitative treatment to B is not inequalitarian. Another egalitarian consideration, rather than the luck egalitarian one, involves here.

The Free-standing view, thus, insists that the distributive fairness of A's advantage and B's disadvantage is irrelevant for assessing whether A exploits B, and whether it is unjust for A to take advantage of B's disadvantage to extract more benefits. Hence, the egalitarian claim, endorsed by the Derivative approach, is incomplete.

My critique of the Derivative approach, then, applies to the cleanly generated capitalist relationships as well. Even if the capitalist relationships are cleanly generated, this does not follow that exploitation would not occur anymore. The asymmetry of productive assets may generate option-luck exploitation easily. Even though the capitalist relationships are not unfair relative to the luck/choice principle, as Cohen points out, the asymmetry of means of production is very likely to generate exploitation. If what matters is the tendency that the asymmetry of means of production will generate exploitation, rather than the inequality as such, then the worry of its tendency remains even in a just world. The worry is not about the possibility but a real threat. Just as in the gun-inequality case where the unequal distribution of guns is very likely to result in many killings, it is no exaggeration that the asymmetry of productive assets may lead to option-luck exploitation. The cleanly generated capitalist relationship, then, is objectionable just because option-luck exploitation may occur between workers and capitalists anyway. Hence, the presence of

option-luck exploitation in cleanly generated capitalist relationships suggests that the Derivative approach holds an implausible account of exploitation.

If that is the case, we then have a reason, other than the luck egalitarian one, to constrain the asymmetry of advantages, even if it stems purely from option luck. We have reason to object to the cleanly generated capitalist relationship, not because the outcome of the relationship is unfair according to a distributive egalitarian reason, but because the relationships may generate further exploitation if a free-standing principle of non-exploitation is not provided.<sup>101</sup> Hence, luck egalitarianism is vulnerable to the exploitation objection, and luck egalitarians need a free-standing principle of non-exploitation.

#### 6.2.5. Objections and Replies

Now I shall consider two ways that luck egalitarians can reply to option-luck exploitation for *egalitarian* reasons. I would not discuss how luck egalitarians can condemn the injustice of exploitation by adopting a pluralistic position. As Lippert-Rasmussen (2016: 3) indicates, luck egalitarians can regard exploitation as an injustice for non-egalitarian reasons. For instance, Wood (2016) has argued that since exploitation constrains the exploitates' freedom, it is unjust for the freedom-based reason.<sup>102</sup> Luck egalitarians can deal effectively with option-luck exploitation by appealing to non-egalitarian considerations. I shall leave the pluralistic position aside. Moreover, since the victims of option-luck exploitation suffer purely option luck, it is possible for luck egalitarians to adopt the all-luck-egalitarianism approach and a principle of stakes, that I discussed in Chapter 5, to cope with option-luck exploitation. Thus, I shall not discuss the responses anymore and focus instead on two major ways, namely, Sufficiencyarianism and genuine choice.

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<sup>101</sup> At the end of this chapter, I will explain why non-exploitation could be construed as an egalitarian reason and, therefore, we have an egalitarian reason to constrain option-luck inequality.

<sup>102</sup> See also Cohen (1983c) for his explanation of the unfreedom of proletarians.

### 6.2.5.1. Sufficientarian Luck Egalitarianism

One way to respond to option-luck exploitation is to argue that some are exploited just because they are below a threshold of sufficiency.<sup>103</sup> Once their basic needs meet a sufficiency threshold, at least some forms of option-luck exploitation cease to occur. Sufficientarianism concerns the pattern of distribution. Proponents of Sufficientarianism claim that “justice requires that everyone gets an adequate (or sufficient) amount of specified goods” (Brock, 2018: 87). The core idea of Sufficientarianism then requires that “*a certain requirement or standard has been met*”, rather than everyone should be equally well-off (Frankfurt, 1987: 37, his italics). For sufficientarians, the satisfaction of one’s basic needs is more important than equal distribution. While egalitarianism aims to make an interpersonal comparison between individuals, Sufficientarianism requires the fulfilment of a non-comparative standard. It thus offers an alternative of patterns of distributive justice to egalitarianism. When complementing with Sufficientarianism, luck egalitarianism secures the satisfaction of everyone’s basic needs, when and because one’s insufficiency of basic needs is a matter of bad brute luck.

Sufficientarian luck egalitarianism, therefore, guarantees that no one will fall below a sufficiency baseline, even if their destitution is caused by their bad option luck. Therefore, in cleanly generated capitalist relationships, labourers are capable of refuting an exploitative offer because they are not afraid of unemployment, provided that their basic needs are secured. Moreover, one major way that option-luck exploitation takes place is when and because people’s basic needs are unmet due to their bad option luck. Luck egalitarianism, when complemented with Sufficientarianism, can prevent those forms of

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<sup>103</sup> For a similar discussion, see section 4.2.2.

option-luck exploitation from happening. More importantly, the incorporation of Sufficiencyarianism is still based on an egalitarian reason, because Sufficiencyarianism belongs to the family of distributive equality. It aims to guarantee a sufficiency threshold. Hence, luck egalitarians can eliminate, at least, some forms of option-luck exploitation without reference to non-egalitarian reasons.

Sufficiencyarian luck egalitarianism, however, faces an objection. For Mulkeen, since Sufficiencyarian luck egalitarianism, endorsed by Tan (2012), is *unconditional* in that it disregards how people's disadvantages come about, it might expose members of society to opportunists, who use the unconditional sufficiency threshold to gain benefits and impose the cost of their risky behaviours on others (2020: 10-13). For example, a hiker may use the sufficiency threshold to continue her risky behaviours, while imposing the burdens on other members of society. Thus, Sufficiencyarian luck egalitarianism, if unconditional, invites opportunistic exploitation, where the opportunists take advantage of the unconditional sufficiency threshold to obtain unfair benefits.

In response, Andrew Williams's distinction between externalising and internalising Sufficiencyarians is illuminating here. While both variants uphold sufficiency, internalisers will ask the opportunists to bear the cost of their risky behaviour, and externalizers will demand the public to take the cost of other's risky behaviour (Williams, 2008: 501-502). For example, in *Greedy Mountain Rescuer*, internalisers might demand compulsory insurance and charge a special tax on Bob's risky behaviour without imposing the cost of rescuing Bob to others, externalizers might use the public tax to cover the cost (Williams, 2008: 502). Thus, Mulkeen's objection fails to notice that Sufficiencyarian luck egalitarians can be an internaliser to avoid opportunist exploitation. Consequently, Sufficiencyarian luck egalitarianism with proper constraints on opportunistic exploitation can respond to option-luck exploitation without appealing to a free-standing principle of non-exploitation.

Nonetheless, even if Sufficiencyarian luck egalitarians with proper constraints on



opportunistic exploitation are capable of dealing with *some* forms of option-luck exploitation, where people are exploited because of their insufficiency, Sufficientarian luck egalitarians just would not remove *all* forms of option-luck exploitation. Option-luck exploitation may occur even between two persons whose basic needs are satisfied. For instance, in *The Priceless Painting*, Betty is exploited by Alex, not because her basic needs are unmet, but for some other reason. Betty is clearly above a sufficiency threshold, and her exchange with Alex is clearly exploitative. Luck egalitarians, then, cannot invoke a sufficiency principle to fully prevent option-luck exploitation.

#### 6.2.5.2. Genuine Choice

Another way to respond to option-luck exploitation is to argue that the victim of option-luck exploitation should be partially compensated because their disadvantage does not reflect their genuine choice. For some luck egalitarians, people should be fully responsible for her disadvantage if and only if it reflects their genuine choice. As Cohen specifies, “The amount of genuineness that there is in a choice is a matter of degree” (2011: 32). In other words, one’s choice is to some extent influenced by uncontrollable factors and, therefore, luck egalitarians would partially compensate for the victim of bad luck if one’s disadvantage is not a result of purely option luck.

There are several ways that one needs not hold full responsibility for their choice. First, if one’s choices are inadequate, her choice would not be a genuine one. For instance, if one has only two desperate options between being shot by a robber and killing the robber, he hardly has any genuine choice, though he does have two choices on the table. Adequate choices then are a necessary condition of genuine choice (Navin, 2011: 539). Second, the expected outcome of a choice will reduce one’s responsibility for a choice (Navin, 2011: 541). It is likely that, although one is confident about the expected outcome of a risk,

something unexpected happens and leads to a catastrophic consequence that one cannot bear. For instance, someone encounters an air crash because of a systematic design error of the aircraft company. Or, people in a just world would not expect that people's exercising their rights and trading freely will generate exploitation as a result of purely option luck. In either case, we will think that people should not be fully responsible for such an unexpected and disastrous outcome. The choice's genuineness may be undermined by some other factors than the above two. The point, however, is that luck egalitarians will partially compensate for the victim of option-luck exploitation if being exploited does not reflect their genuine choice.

In reply, to compensate for the victim of option-luck exploitation is not to eliminate option-luck exploitation. In *Greedy Mountain Rescuer* and *The Priceless Painting*, even if Bob and Betty are partially compensated, it is totally missing the point since what matters is to prevent exploitation. Luck egalitarians, however, can frame a principle to prevent harms arising from people's lack of genuine choice, rather compensating the harms that arise. I can think of two ways to question the luck egalitarian principle of preventing harms. First, since the effect of the principle should be proportionate to the choice's genuineness, it is unclear how to measure the genuineness of one's choice in practice. Second, there are cases where to be exploited reflects people's genuine choice in the sense that their choices are adequate, and the outcome of their choices is not unexpected. In such cases, the principle, it seems, cannot do anything to option-luck exploitation that reflects people's genuine choice.

In sum, I have demonstrated that although luck egalitarians can deal effectively with brute-luck exploitation, option-luck exploitation remains a perplexing question for them. This is because luck egalitarians hold mistakenly that the source of B's disadvantage is relevant for determining whether or not A exploits B and whether A's advantage-taking behaviour is unjust. However, the fact that option-luck exploitation arises under luck

egalitarian agenda illustrates that the Derivative approach is incomplete, and we shall endorse exploitation as free-standing injustice, instead. When we adopt the Free-standing approach, option-luck exploitation will be considered unjust for luck egalitarians and urges the elimination of it.<sup>104</sup> My conclusion, thus, is that luck egalitarians need a principle of non-exploitation that I develop in the next section, and perhaps some other similar principles, to be complete. Having criticised the luck egalitarian understanding of the injustice of exploitation, in the rest of the chapter, I explicate exploitation as free-standing injustice.

### 6.3. Exploitation as Free-standing Injustice

Exploitation as free-standing injustice claims that exploitation is a free-standing injustice in the fundamental sense that *the anti-egalitarian behaviour*—the exploiter’s pressing her superior advantage upon the exploitee to extract wrongful gains—violates the core ideal of egalitarianism that we should treat one another as social equals, regardless of how B’s disadvantage comes about. More specifically, since the exploiter fails to treat the exploitee’s interests and claims as containing the important moral weight, she violates the principle of egalitarian justice that we treat each other as self-originating sources of justificatory claims. Conversely, when A takes B’s claims and genuine interests as containing equally moral weight as hers, A would not press her advantage upon B to extract wrongful benefits in their asymmetrical relationship. Hence, exploitation is inequalitarian, not mainly because of the unfairness of B’s disadvantage, nor because A and B’s relationship is asymmetrical, but

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<sup>104</sup> But, in order to eliminate option-luck exploitation effectively, luck egalitarians have to analyse the substance of option-luck exploitation and how it arises under an ideally just circumstance. In my view, the question is related to “other-affecting choice”, which refers to a situation where one’s choice is another’s bad brute luck (Lazenby, 2010: 285-286; Elford, 2013: 145-146; Miller, 2015: 137-140). Consequently, luck egalitarianism has to think about how to regulate people’s free choices, which may result in others’ bad brute luck. See also Matthew Seligman (2007: 271-274). However, given the space limitation, I shall not explore the issue any further.

primarily because A presses her superior advantage upon B to extract wrongful gains.

### 6.3.1. What Exploitation is

*A exploits B if and only if (a) A gains wrongfully by (b) taking advantage of B's weaker agency in which (c) B voluntarily engages in a transaction in which with A (or someone, C, who is accountable to A).*

In my formulation, exploitation consists of two forms of wrongful gains: namely, unfair gain, or disrespectful gain, or both. The exploiter can gain unfairly relative to a norm of fair distribution, or she gains from a disrespectful transaction, one that violates the Merely Means Principle, with B. Meaning, unfair gains refer to a situation where a distribution of benefits and burdens between parties in a transaction fails to be consistent with a fairness baseline, and the resulting outcome is unfair to the exploitee. In contrast, disrespectful gains refer to a situation where the exploiter gains from a disrespectful transaction with the exploitee, in which the exploitee is treated merely as a means.

On the other hand, the Relational condition is the crucial element to perceive exploitation as an inequalitarian treatment. Even if A's agency is superior to B, and A is capable of addressing an exploitative offer to B, if A does not press her superiority upon B to extract wrongful benefits, no exploitation occurs. Hence, exploitation, in my view, is fundamentally about A's pressing her superiority against B to extract wrongful gains from their transaction.

Overall, my general account of exploitation includes two forms of wrongful exploitation: unfair exploitation and disrespectful exploitation.<sup>105</sup>

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<sup>105</sup> If we focus on volitional exploitation, (c) should be added.

***Unfair Exploitation:*** A exploits B if A takes advantage of B's weaker agency, compared to A's, to extract unfair benefits from the transaction with B, relative to a fairness baseline.

***Disrespectful Exploitation:*** A exploits B if A takes advantage of B's weaker agency, compared to A's, to gain benefits from the disrespectful transaction that violates the Merely Means Principle, with B.

Given this, let me identify the injustice-making feature in my account of exploitation.

### **6.3.2. Where the Injustice-Making Feature of Exploitation lies**

If a photographer attempts to present a critical photo of the injustice of exploitation to the public, what would it be? A prima facie answer would be the unfairness of the resulting distribution in a transaction. Mark Reiff (2013) offers an account of exploitation as free-standing injustice. For him, exploitation is “the unjust extraction of value from another as part of a voluntary exchange transaction not otherwise prohibited by law” (Reiff, 2013: 27). Exploitation, on Reiff's account, is by definition unjust in that extraction of value violates “the doctrine of the just price” (2013: 44). The principle of the just price refers to the cost of production of a commodity, which has a very long history (Reiff, 2013, ch.2; Wilson, 1975; De Roover, 1968; Baldwin, 1958).<sup>106</sup> Accordingly, whenever an exchange fails to obey the principle of the just price, this means the party, who “receives less than the just price contributes more value to the transaction than he receives in return” (Reiff, 2013: 73), is exploited. On this view, exploitation is unjust because it violates the principle

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<sup>106</sup> See also section 2.3.3.

of reciprocity, which requires that what one contributes should be equivalent to what one receives (Warren, 1995: 51). In a nutshell, for Reiff, exploitation is unjust because it violates the principle of reciprocity.

In my view, Reiff's account is correct, but incomplete because it fails to take disrespectful exploitation into account. In disrespectful exploitation, it does not matter if the exploited receives a just price from the exploiter; the exchange violates the Mere Means Principle and, therefore, it is morally impermissible. Thus, though it is sufficient, the violation of the principle of the just price is not necessary for exploitation. Rather, Reiff's account is a form of unfair exploitation in that the principle of the just price is a fairness baseline that signifies when a distribution of benefits and burdens is fair or unfair. Since unfair exploitation is only a major form of exploitation, Reiff's account is incomplete and explains only part of the story. If the photographer presents the resulting unfairness as a critical moment of the injustice of exploitation to the public, people might think that "well, exploitation is all about the resulting outcome." That picture, for me, is misleading.

Now turn to disrespectfulness. Disrespectful exploitation is clearly inegalitarian, for instance, in the Scanlon's sense that it is humiliating (Scanlon, 2018: 100). The exploiter's gaining benefits from a disrespectful transaction humiliates the exploitee. However, even if disrespectful exploitation is inegalitarian, as it is only another major form of exploitation, it cannot represent the fundamental injustice-making feature of exploitation. To perceive disrespectfulness in exploitation as the fundamental injustice-making feature is to convey an impression that exploitation is all about prohibited exchanges, such as commercial surrogacy, child labour and organ selling. This picture, too, is misleading and dangerous because it runs the risk of normalising the incomplete image of exploitation (Balibar, 2017: 135-136). That is, the impression will make us get accustomed to everyday exploitative relationships.

In my view, it is the moment—when the exploiter presses her superior advantage

against the exploitee to extract wrongful gains — that conveys the *complete* image of the injustice of exploitation. I agree with Christopher Bertram that “Exploitation essentially involves a charge of injustice in process: it involves not just a judgment about the relative benefits and burdens endured by persons, but also about how the pattern of differential benefit arose from the interaction of producers and beneficiaries” (2009: 149). Neither the unfair outcome nor the disrespectfulness in exploitation *solely* represents the critical moment of the injustice of exploitation. Rather, the focal point of exploitation lies in *the anti-egalitarian conduct* that the exploiter presses her superior advantage upon the exploitee to secure wrongful benefits. The anti-egalitarian conduct consists of distributive and relational aspects of exploitation, which is the whole picture of exploitation.

Moreover, *the anti-egalitarian conduct* — the exploiter uses her greater advantage against the exploitee’s relative inferiority to gain wrongfully — has drawn our attention from the *historical* focus — that is, the pedigree of the exploiter’s and the exploitee’s (dis)advantages — to the *ahistorical* character of exploitation. Contrary to the luck egalitarian understanding, the anti-egalitarian conduct highlights the ahistorical nature of the injustice of exploitation. Exploitation as free-standing injustice, thus, holds that exploitation is primarily an ahistorical injustice in that we need not trace the history of one’s (dis)advantage to assess whether exploitation is just or unjust. Instead, exploitation is unjust whenever it takes place. It seems implausible if someone claims that when A presses her fair advantage upon B’s fair disadvantage to extract unfair benefits, no exploitation involves between them. Even if ants worked so hard in summer that their great advantages in winter are fair and grasshoppers were so lazy in summer that their disadvantages in winter are not unfair, the respective fairness of their (dis)advantages would not make any difference on the claim that ants exploit grasshoppers when ants offer a sweatshop contract to grasshoppers by virtue of the grasshoppers’ destitution. The anti-egalitarian conduct, therefore, captures the critical, complete picture of the injustice of exploitation.

### 6.3.3. Why Exploitation is Unjust for Egalitarians?

The conduct—A's pressing her superior advantage upon B to extract wrongful gains—is inequalitarian in the sense that it violates the core egalitarian principle that we ought to treat and regard one another as social equals. The relational dimension of equality explains the injustice of the conduct. “The relational ideal of equality”, as Anderson specifies, “focuses on the terms of our interactions, rather than on comparisons of the amount of some good that different individuals enjoy” (2008: 263).

Nonetheless, we can further distinguish two aspects of relational equality, namely, *equality of status* and *equality of interactions*. Exploitation is fundamentally associated with equality of interactions, rather than equality of status. Equality of status objects to hierarchical social relations, such as hierarchies of esteem, power, and standing. One aspect of relational equality, thus, demands equal respect, power and standing (Anderson, 2008: 263-264). However, equality of status does not amount to equality of interactions. Objectionable inequalities, such as domination, oppression and social exclusion, are associated more with equality of interactions than with equality of status in that individual actions cause these objectionable inequalities. Even if each enjoys equal power, status and esteem, this will not necessarily guarantee that each will treat and regard one another as social equals. So understood, forms of social oppression concern more about equality of interactions than equality of status. In exploitation, what matters is not that the exploiter enjoys more agency than the exploitee, but that the exploiter *presses* her superior advantage upon the exploitee to extract wrongful gains. Exploitation, thus, constitutes an objectionable form of unequal interactions and is, *pro tanto*, unjust.

The ideal of ‘equality of interactions’ needs further clarification and explanation. The core ideal of equality, I believe, lies in that each person should be “regarded as *self-originating*



sources of claims” (Anderson, 2008: 264). To elaborate, in a society of equals, each should enjoy equal status to make justificatory claims on others and considers others’ interest seriously (Anderson, 1999: 313). No one would be excluded from engaging in the process that determines their relevant interests. Being a self-originating source of claims is to be included in the democratic procedure and to have a justificatory claim on other members. The ideal of treating each person as a self-originating source of justificatory claims, I believe, is shared among contemporary egalitarians. The ideal, therefore, is not meant to distinguish between distributive and social egalitarianism, but it can explain properly why forms of social oppression are anti-egalitarian.

So understood, for egalitarians, injustice is “about people being deprived of something they have reciprocally and generally non-rejectable reasons to claim” (Forst, 2014: 114). Victims of social oppression are, in general, excluded from the process of justificatory claims, and their interests are treated as secondary. Exploitation, thus, is *unjust* to the extent that to press one’s superior advantage upon another to extract wrongful benefits, is to exclude the exploitees from the process that determine their interests and to take their interests as secondary. The fact that the exploiter could and should have offered a fair contract to the exploitee illustrates that the exploiter takes the exploitee’s interests as secondary; and, by pressing her advantage upon the exploitee to extract wrongful gains, the exploitee’s justificatory claim is neglected. Hence, exploitation is *inegalitarian* in the sense that the exploiter treats the exploitee as inferior that her justificatory claims are deprived by the exploiter. As a result, exploitation is, in itself, an independent source of injustice, whose injustice lies in the anti-egalitarian conduct that the exploiter presses superior advantage against the exploitee to secure wrongful benefits.

#### **6.4. Conclusion**

I have formulated two distinct ways to perceive the injustice of exploitation, namely, the Derivative approach and the Free-standing approach. Based on the distinction, I have argued that the Derivative approach, endorsed by luck egalitarians, is incomplete because option-luck exploitation occurs under the luck egalitarian agenda. Therefore, the luck egalitarian treatment to exploitation is incomplete, and luck egalitarians need to adopt the Free-standing approach instead. On the other hand, based on my account of exploitation, I specify how to perceive the injustice of exploitation as a free-standing injustice. The injustice-making feature of exploitation lies fundamentally in the anti-egalitarian conduct that the exploiter presses her superior advantage upon the exploitee to extract wrongful gains. The conduct is anti-egalitarian, and thus unjust, in the general sense that it violates the egalitarian principle that we ought to treat one another as equals. More specifically, the fact that the exploiter takes the exploitee's interests as secondary and deprive the exploitee of her justificatory claims makes exploitation inequalitarian. Hence, exploitation is unjust for egalitarians in the above sense. Having answered the question: why exploitation is unjust for egalitarians, in Part 3, I deal with the practical issue, namely, sweatshop exploitation. I will assess whether or not sweatshop exploitation is morally permissible, and whether or not the third-party interference with sweatshop exploitation is morally permissibility, *all things considered*.

## 7. The Morality and Political Morality of Sweatshop Labour

Capitalism, as Marx famously indicated, has created unprecedented wealth in human history, and poverty of the exploited as well. The powerful productivity of capitalism enables some people to enjoy a decent life at the expense of accelerating social and global inequalities. How, then, should we assess and respond to capitalism that creates great wealth and, global and social, inequalities at the same time? The difficulty we face is how to weigh different moral considerations, pros and cons, and give an all-things-considered judgment on capitalism. The focus of Chapter 6 is on sweatshop exploitation, where workers in developing countries are exploited by offshore companies, and it is undeniable that they benefit from sweatshop labour.<sup>107</sup>

Many condemn sweatshop exploitation. However, some, most notably Matt Zwolinski (2007), have defended sweatshops by appealing to what has been called *the non-worseness claim*. Roughly stated, this holds that exploitation, all things considered, is morally permissible if it is mutually beneficial and consensual. They infer from this that the state and other third parties should not interfere with sweatshop exploitation. Contra Zwolinski, I contend that sweatshop exploitation, even if it benefits the poor in developing countries, is morally impermissible, *all things considered*. I further argue that third-party interference with sweatshop exploitation, *all things considered*, is morally required *if* the exploited will be better off after the interference.

The chapter is divided into four parts. In Part I, I introduce the basic elements of the non-worseness claim. Then I distinguish between three dimensions related to sweatshop exploitation: whether or not exploitation is *pro tanto* morally wrongful (the first question), whether or not sweatshop exploitation is morally permissible, all things considered (the

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<sup>107</sup> Sweatshop exploitation is a paradigmatic case of global exploitation. However, exploitation of a similar kind is not uncommon in developed countries, such that guest workers and immigrants could be exploited.

second question) and whether or not it is morally permissible for the third parties to interfere with sweatshop exploitation (the third question). In Part II, I argue that once we distinguish between the moral assessment of the state of affairs of sweatshop exploitation and of the exploiter's action, it becomes clear that the moral permissibility of sweatshop exploitation depends, not on the fact that it benefits the poor in developing countries, but on what kind of sweatshop exploiters we refer to. When we distinguish between discretionary exploiters (who can pay non-exploitative wages) and structural exploiters (who cannot), it is clear that sweatshop exploitation is morally impermissible, all things considered, when and because sweatshop exploiters are capable of paying non-exploitative wages. In Part III, contra Zwolinski who argues that it is morally impermissible for the third parties to interfere with sweatshop exploitation because the removal of it will leave the poor in poverty, I contend that it is always morally required for the third parties to interfere with sweatshop exploitation when and because they can ensure that the exploited will be better off than being exploited. In Part IV, I examine and reply to an objection to the moral impermissibility of sweatshop exploitation and an objection to the moral permissibility of the third-party interference with sweatshop exploitation.

### **7.1. The Non-Worseness Claim**

*The non-worseness claim* (NWC): exploitation is morally better than non-interaction if:

- (1) both A and B agree to the transaction.
- (2) the transaction is mutually beneficial for A and B.
- (3) there are no negative external effects on any third party (Wertheimer, 1996: 289; Zwolinski, 2007: 707-708).

Given that; A has a right not to interact with B; both agree to the transaction; and the transaction is mutually beneficial in the sense that they gain from it, as compared to non-interaction, the NWC asserts that mutually beneficial and consensual exploitation cannot be morally worse than non-interaction.<sup>108</sup> What follows from the NWC, defenders of sweatshops argue, is the claim that third parties ought not to interfere with sweatshop exploitation. Hence, the NWC justifies that sweatshop exploitation is not morally wrong and should not be legally prohibited.

### 7.1.1. Some Clarifications of the NWC and Three Dimensions

Most discussions of the NWC are in the context of sweatshops in developing countries where sweatshop labourers are in poverty and choose to work in exploitative sweatshops.<sup>109</sup> Moreover, as empirical research shows, wages in sweatshops are usually better than other local works (Powell, 2014: 48-62); thus, sweatshop work “represents the best alternative available to workers” (Powell & Zwolinski, 2012: 453). This is true only if the owners of sweatshops pay wages better than wages in local works *and* no one (including the owners of sweatshops) is willing to pay wages better than exploitative sweatshops. In other words, whenever someone (including the owners of sweatshops) is willing to pay wages better than the sweatshop wages, sweatshops labour would not be the best option for workers in developing countries. Besides, like many critics of sweatshops, I do not question the validity of labourers’ consent to sweatshop jobs and the fact that sweatshop work is the

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<sup>108</sup> In the chapter, I focus exclusively on mutually beneficial and consensual exploitation. Harmful and/or involuntary exploitation is excluded from my discussion since it is widely acknowledged by most theorists of exploitation that it is morally wrongful and ought to be prohibited. Besides, sweatshop exploitation in my discussion refers to mutually beneficial and consensual exploitation, though in practice sweatshop exploitation could be harmful and/or involuntary. Thus, I use ‘sweatshop exploitation’ and ‘mutually beneficial and consensual exploitation’ interchangeably.

<sup>109</sup> Sweatshop labour refers to the situation where the working conditions are poor and unsafe, the wages are below the living standards, and workers suffer long working hours and arbitrary disciplines (Radin & Calkin, 2006: 262). See also Mezzadri (2017).

best option available to workers in developing countries when the above condition is met.

I do not dispute (1) and (2) as factual claims.

Sweatshop labour is exploitative in the sense that sweatshop wages are unfair relative to a fairness baseline (Meyer, 2004: 320-322; Valdman, 2008: 3-9; Wertheimer, 1996). Exploitation in sweatshops, thus, refers to *unfairness* in the outcome of a transaction (Faraci, 2019: 174). Hence, we can add (4) to the NWC:

(4) sweatshops are exploitative in the sense that their wages are unfair to B according to a fairness baseline; therefore, exploitation is *pro tanto* morally wrongful because of its unfairness in the outcome.

The NWC then can be reformulated as *mutually beneficial and consensual, though unfair, transactions that are not morally worse than non-interaction*. Acknowledging that sweatshops are exploitative is not vital for defenders of sweatshops. They may argue either that exploitation as unfairness is trumped by moral considerations of (1) and (2) and (3) or that, third parties still ought not to interfere with sweatshop exploitation even if it is, all things considered, is morally wrongful.

Now, to clarify the issues raised by the NWC, three questions should be distinguished. The first question asks whether or not exploitation is *pro tanto* wrong. “A *pro tanto* reason”, as Shelly Kagan suggests, “has genuine weight, but nonetheless may be outweighed by other considerations” (1991: 17). To my knowledge, even defenders of sweatshops acknowledge that exploitation is *pro tanto* wrong, though they differ in what constitutes the wrong-making feature of exploitation. For this reason, we can leave the first question aside and focus on the second and the third questions, the answers to which are disputed.

Granting that exploitation is *pro tanto* wrong, the second question concerns whether or not exploitation *alone* is sufficient to make sweatshop labour all-things-considered wrong.

To make an all-things-considered moral judgment of an act, one has to consider and weigh the relevant moral principles applicable to the act (Waldron, 1981: 25). If so, we need to take the relevant moral factors of sweatshops into account, and some of these factors might jointly offer a decisive reason to permit sweatshop exploitation. When weighing between (1), (2), (3) and (4), people might have different all-things-considered judgments on sweatshop labour. Next, even if sweatshop exploitation is all-things-considered wrong, some might hold that third parties should still not interfere with it because the interference of sweatshops will leave people in poverty. The third question, thus, concerns whether or not it is morally permissible for third parties to interfere with exploitative sweatshops.

My responses to both questions are based on my critiques of Matt Zwolinski's positions on the NWC. Before examining Zwolinski's positions, it is worth introducing the evaluative claim of the NWC, which asserts that *the state of affairs* of sweatshop exploitation is morally better than its absence. The evaluative claim is important because defenders of sweatshops refer to the claim to answer both questions.

### 7.1.2. The Evaluative Claim of the NWC

It is important to note that the NWC can serve as a moral assessment of “the state of affairs” or of “actions” (Wertheimer, 2012: 299). Concerning the state of affairs, the NWC asserts that *the state of affairs* of sweatshop exploitation is morally better than its absence by weighing different relevant moral factors. Call this *the evaluative claim*. On the other hand, when assessing the action of sweatshop exploitation, the NWC generates *a first-party deontic claim*: it is morally permissible for sweatshop owners to exploit employees because non-transaction is worse for sweatshop labourers than being exploited by sweatshop owners (Faraci, 2019: 174). Distinguishing the two claims will help us to examine whether or not sweatshop exploitation is morally permissible, all things considered, and how third parties

ought to respond to it. Let us begin with the evaluative claim and introduce each element in the NWC.

The element (1)—A and B agree to the transaction—represents the deontological component of the NWC. (1) ensures that sweatshop labour does not impose non-consensual harms on B, which sets a moral constraint on the consequence of sweatshop labour (Wertheimer, 2012: 297). Given that A and B agree to the transaction, (1) is a good-making feature of sweatshop labour. Next, (2) ensures that A and B gain compared to the non-transaction baseline; (2) is another good-making feature in the NWC. Next, (3) presumes that sweatshop labour generates no *net* negative effects on any third party. Then, (3) remains morally neutral in our assessment of the state of affairs in sweatshops. Next, (4) is the only bad-making feature in the NWC because unfairness in *the outcome* makes sweatshop labour wrongfully exploitative.<sup>110</sup>

To put together, the NWC offers an evaluative claim: the state of affairs of sweatshop exploitation is morally better than its absence for workers in developing countries because (1) and (2) together trump (4).<sup>111</sup> (1) is a moral constraint on the consequence of sweatshop exploitation. Provided that sweatshop labourers agree to work in sweatshops, (1) would not affect our moral evaluation on the state of affairs of sweatshop exploitation. Now, the core statement in the evaluative claim is that the state of affairs in which B benefits *unfairly* “seems more good than” the state of affairs in which there is no unfairness but B gains nothing and lives in destitution (Faraci, 2019: 174). The core idea in the evaluative claim is that the net individual welfare gains *override* unfairness in the outcome

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<sup>110</sup> It is possible to treat the unfairness as a deontological principle that unfair distribution is morally impermissible. However, whether or not the unfairness is treated as a deontological and a consequentialist principle, would not affect my argument here. When discussing the wrongness of sweatshop exploitation, most treat the wrongness as unfairness in the outcome. I thus follow the line.

<sup>111</sup> (3) is problematic because, in practice, sweatshop labour generates net negative effects on third parties. For example, sweatshop factories might cause environmental pollution, and, in some cases, they plunder agricultural lands to build factories. However, for the sake of argument, I shall leave (3) aside for a moment and discuss (3) in the last section.



in the context of sweatshop labour. Hence, even though the unfairness in the outcome is a bad making feature in sweatshop labour, to be exploited is morally better than non-transaction for the poor. Call this: *the Betterness-of-Welfare claim*.

- (5) The Betterness-of-Welfare claim (BWC): gains in welfare can (if sufficiently great) morally outweigh the wrongness of unfairness.

Of course, the BWC is controversial. For instance, some consequentialists may argue that when it is possible for A to transact fairly with B, which produces the best outcome, they will require A to transact fairly with B (Bailey, 2011: 242-243).<sup>112</sup> The truth of the BWC, thus, depends partly on whether or not A is able to offer a fair contract to B.<sup>113</sup> Besides, the truth of the BWC also depends partly on whether the benefits that B obtains from sweatshop labour are sufficient to outweigh the concern of unfairness in the transaction. For instance, suppose B gains £100 from her transaction with A, and the fair wage is, say, £1000. In the case, although B benefits compared to the no-transaction baseline, some egalitarians will contest that the unfairness in the case is so critical that the concern of the unfairness outweighs the net welfare gains. In some cases, since the benefits that B gain from a transaction are trivial (e.g. £1) and the unfairness is great, B's gains cannot outweigh the concern of the unfairness in distribution. Hence, (5) is not always true.

The defenders of sweatshop labour, however, need not claim that (5) is always true, but (5) only needs to be true in the context of sweatshop labour. Still, they need to establish the truth of (5) in sweatshops. I can think of a way to justify (5). The defenders may resort to the exploitee's consent to exploitative sweatshop work to justify (5). Because labourers agree to sweatshop contracts, they tacitly accept that gains in welfare are morally more

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<sup>112</sup> See also Benjamin Ferguson (2016: 957-965).

<sup>113</sup> I will discuss this point when criticising Zwolinski's view.

important than the unfairness; otherwise, they will decline the contract. The fact that labourers accept sweatshop contracts seems to endorse the BWC. By resorting to labourers' consent, defenders of sweatshops may prove that (5) is true in sweatshops.<sup>114</sup>

Hence, the evaluative claim asserts that, in effect, mutually beneficial and consensual, though unfair, transactions are morally better than non-transaction for sweatshop labourers. Nonetheless, it would be more precise to restate that, in effect, *sweatshop exploitation is morally better than being left in poverty* for labourers. What makes a sweatshop offer particularly attractive for the poor is because the offer is compared with poverty, but not with nothing. Although sweatshop jobs might or might not take people in developing countries out of poverty, it is certain that the jobs will make them somewhat better off. The non-interaction baseline is actually poverty, rather than a decent life. For sweatshop labourers, non-transaction means being left in poverty, and their destitution makes the BWC particularly true for them. The evaluative claim, therefore, serves as the basis for further judgments on the second — sweatshop exploitation is morally permissible, all things considered — and the third question — the state and other third parties should not interfere with sweatshop exploitation. Now we turn to Zwolinski's positions on both questions.

## 7.2. Zwolinski on the Moral Permissibility of Sweatshop Exploitation

In the section, I introduce and criticise Zwolinski's *all-things-considered* view on the moral permissibility of sweatshop exploitation.

### 7.2.1. Zwolinski's Position on Sweatshop Exploitation

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<sup>114</sup> This view is controversial, however. Some might argue that B's consent is irrelevant to, or not the only basis for judging, whether or not the unfairness is outweighed by the welfare gain to B.

Regarding the second question, Zwolinski holds that sweatshop exploitation is morally permissible, *all things considered*, even though he acknowledges that exploitation is pro tanto morally wrongful. Moreover, he also insists on the gulf between the moral assessment, and the legal prohibition, of sweatshop exploitation. As Zwolinski maintains:

My position is that there is a large gulf between concluding that the activities of sweatshops are morally evil and concluding that sweatshop labor ought to be legally prohibited, boycotted, regulated, or prohibited by moral norms. To the extent that sweatshops do evil to their workers, they do so in the context of providing their workers with a financial benefit, and workers' eager readiness to consent to the conditions of sweatshop labor shows that they view this benefit as considerable. This fact leads to the ultimate practical conclusion of this paper, which is that there is a strong moral reason for third parties such as consumers and host and home country governments to refrain from acting in ways which are likely to deprive sweatshop workers of their jobs. (Zwolinski, 2007: 690)

The quotation, though it appears to emphasise the legal prohibition of sweatshop exploitation, actually offers an all-things-considered claim of the moral permissibility of sweatshop exploitation as well. Zwolinski offers two arguments to justify sweatshop exploitation: the transformative argument and the inconsistency argument, and an argument for the moral impermissibility of third-party interference, such as the legal ban and consumer boycotts. Let us consider his arguments for the second question concerning the moral permissibility of sweatshop exploitation.

#### **7.2.1.1. The Transformative Argument**

The transformative argument explains the moral implication of (1): both A and B agree to the transaction. For Zwolinski, the exploitee's consent to the sweatshop contract is "morally transformative" in that her consent expresses B's "autonomy-exercising" and "preference-evincing" choice (2007: 691-695). One's consent is morally transformative in

the sense that that “it makes things morally permissible that would not be permissible without the consent” (Dänzer, 2014: 273). In other words, if we view sweatshop exploitation as *prima facie* morally impermissible, the exploitee’s consent to it will make sweatshop contracts morally permissible. Moreover, for him, even if B has a relatively small choice set such as a choice between sweatshop labouring and destitution, still B’s choice, to a minimum extent, expresses B’s autonomy. The removal of B’s exploitative choice, thus, will infringe her autonomy and disrespect the exploitee (Zwolinski, 2007: 694, 2010: 348). However, we shall note that, for Zwolinski, infringing B’s autonomy is only a *pro tanto* wrong that could be overridden by other moral considerations (2007: fn.13). The exploitee’s consent to sweatshops, for Zwolinski, does not suffice to justify sweatshop exploitation. Hence, the transformative argument only serves as a moral reason to justify sweatshop exploitation.

#### 7.2.1.2. The Inconsistency Argument

Rather than argue that sweatshop exploitation is *pro tanto* morally permissible, the consistency argument, proposed by Zwolinski, argues that sweatshop exploitation is morally permissible, all things considered. It contends that granting that sweatshop exploitation is *pro tanto* wrong, it seems inconsistent that we condemn sweatshop exploiters who *help* the poor in developing countries by benefiting them unfairly, but we do not condemn people and firms that do nothing to help the poor (Zwolinski, 2008: 356-357, 2010: 348-349, 2012: 167-168). By comparison with those who do nothing to help the poor in developing countries, sweatshop exploiters seem to be much better because they benefit the poor, though unfairly. We should note that the inconsistency argument implicitly endorses a variant of the BWC by claiming that to benefit the poor unfairly is morally better than to offer no help. Zwolinski justifies the BWC from the perspective of

rescues. Whether or not sweatshop exploitation amounts to rescuing the poor is controversial, and I will return to the point later on. Zwolinski's point is that if no help is morally permissible, why should we think that sweatshop exploitation that helps the poor is morally impermissible? Hence, the inconsistency argument questions the inconsistent evaluation between sweatshop exploitation and no help. As Zwolinski contends:

Consistency seems to require that we revise our moral beliefs: either by holding that neglect [no help] is worse than we previously thought, or by holding that exploitation is less bad than we previously thought. Either way of resolving the inconsistency, however, leads us to abandon the belief that sweatshops who exploit their workers are doing anything *especially* wrong. (2012: 168, his italic)

On the same page, Zwolinski continues:

[I]f it is permissible for the employer not to hire prospective workers, and if hiring prospective workers at benefit level X is better for both the employer and the worker than not hiring the prospective workers at all, then how could doing so be wrong? (2012: 168)

In the above two paragraphs, Zwolinski argues that sweatshop exploitation is all things considered morally permissible. For him, even if exploitation in sweatshops is *pro tanto* wrong, given that (1) the exploitee's consent to sweatshop labour expresses her autonomy and that (2) unfairly benefiting is morally better than being left in poverty (the evaluative claim), sweatshop exploitation is morally permissible, all things considered. More importantly, Zwolinski evaluates not merely *the state of affairs*, but also *actions*, of sweatshop exploitation, the distinction that he has conflated in the above two paragraphs. If so, he is not only presenting an all-things-considered claim of the state of affairs of sweatshop exploitation, but also that of the exploiter's action of sweatshop exploitation. That is, it is morally permissible for *sweatshop owners* to exploit employees because, for sweatshop

labourers, being left in poverty is morally worse than being exploited by sweatshop owners, all things considered. Call this *the first-party deontological claim* (Faraci, 2019: 174). Note that the first-party deontological claim could be that it is morally impermissible or permissible for *sweatshop owners* to exploit employees. The first-party deontological claim will affect our evaluation of the question of whether or not sweatshop exploitation is all things considered morally permissible.

When the first-party deontological claim is separated from the evaluative claim, and when the sweatshop owner's action is distinguished from the state of affairs of sweatshop labour, it will be doubtful whether or not sweatshop owners act in a morally permissible manner. In what follows, I criticise the transformative argument and the inconsistency argument and examine the first-party deontological claim.

### **7.2.2. An Objection to the Transformative Argument**

The transformative argument has two problems in the context of sweatshop exploitation: the labourer's consent to sweatshop exploitation is not morally transformative, and their consent would not cancel or diminish the wrongness of exploitation.

First, it is doubtful whether or not sweatshop labourers' consent to sweatshop exploitation is morally transformative. Some defenders of sweatshops tend to argue that labourers' consent to sweatshops is morally transformative. Their view is misleading because their decision to accept sweatshop contracts only means that the contract is the best option in the status quo. The contract is their rational choice (Preiss, 2014: 65; Dänzer, 2014: 281). For one's consent to be morally transformative, she must have a minimum number of choices available to her (quantity of options) *and* "one or more acceptable options in absolute terms available" (quality of options) (Dänzer, 2014: 281). Even though theorists differ in what the minimum number of choices is and in what makes an option

morally acceptable, an individual's consent suffices to be morally transformative only if she has an acceptable quantity and quality of options. It is doubtful that sweatshop labour meets the two conditions.

Now suppose that the quantity of sweatshop labourers' choices meets a minimum number; however, it is doubtful that any of their options is morally acceptable in absolute terms. Of course, this depends on what counts as a morally acceptable option in absolute terms. Zwolinski, however, does not explain why sweatshop exploitation is morally acceptable in absolute terms. The fact that sweatshop exploitation is morally better than non-transaction, nonetheless, would not make sweatshops a morally acceptable job in absolute terms. Particularly, if we take a well-paid job as the absolute standard that makes a job morally acceptable, then Zwolinski owes us an explanation why exploitative sweatshop that fails to meet the absolute standard, will still count as a morally acceptable option. Hence, if none of the sweatshop labourers' options are morally acceptable in absolute terms, their consent to sweatshop labour is not morally transformative. The transformative argument fails.

Second, even if we grant that labourers' consent to sweatshop work is sound in quantity and quality, their consent would not cancel the wrongness of exploitation. We can think of cases where B is rich and thus that B has a much better than adequate range available to him. However, suppose B desperately wants to be a member of a prestigious club and A is willing to support B's application only if B gives A a large sum of money that B can easily afford. In the case, A exploits B by taking advantage of B's desperate desire to gain the membership, even though the quantity and the quality of B's option satisfy the standards of acceptability. The fact that B's voluntarily entering into an exploitative contract just would not cancel the wrongness that A exploits B. As Zwolinski himself acknowledges, the transformative argument is only a *pro tanto* good-making feature of the NWC that can be trumped by other moral considerations (2007: fn.13). Sweatshop

labourers' consent does not suffice to diminish the wrongness of exploitation. Hence, B's consent would not turn otherwise morally impermissible exploitation into morally permissible.

Consequently, if I am correct that it is dubious that sweatshop labourers' consent to exploitation is morally transformative and that their consent would not cancel the wrongness of exploitation, then we can leave the transformative argument aside since the normative power of the consent alone cannot provide an all-things-considered reason of moral permissibility of sweatshop exploitation.

### **7.2.3. Two Responses to the Inconsistency Argument**

The inconsistency argument contends that, provided that non-transaction with the poor is morally permissible and that sweatshop exploitation benefits the poor, it is inconsistent that we condemn sweatshop exploitation but forgo those who do nothing to help the poor. I offer two responses to Zwolinski's complaint.

#### **7.2.3.1. Exploitation is not Helping**

Although exploitation, for Zwolinski, is not particularly wrong when compared to the morally permissible act of non-transaction, it is misleading to equate exploitation with being rescued. The stark difference between exploitation and a rescue is that while exploitation involves how A and B allocate social surplus, generated by their transaction, a rescue generates no social surplus. If mutually beneficial exploitation amounts to a rescue, I wonder why it is always sweatshop exploiters who gain more than the poor relative to a fairness baseline. To put the same point differently, it is odd when a rescuer says that she is willing to help the poor only if she constantly gains from their transaction. Quite the



contrary, a duty bearer of a rescue tends to be the one who takes the cost of the rescue. The fact that mutually beneficial exploitation happens to have the same effect as rescuing — benefiting the poor or the need — does not mean that exploitation is similar in morally relevant ways to rescuing. Hence, it is misleading to say that sweatshop owners are helping the poor.

However, even if mutually beneficial exploitation does not amount to rescuing, this would not diminish the inconsistency argument. There are two points in the argument: one is the *inconsistent* moral assessment between no help and sweatshop exploitation; another, more crucially, is that sweatshop exploitation is morally permissible, all things considered. Let us consider the first point first and then the second.

#### **7.2.3.2. No Help is Morally Impermissible**

A simple way to respond to the first point of the inconsistency argument is to indicate that no help is morally impermissible. If no help is morally impermissible, sweatshop exploitation should be morally condemned even if sweatshop exploitation is no worse than no help.

Joe Horton's response to Zwolinski's view is straightforward: non-transaction is morally impermissible, "[i]f you can spare someone from significant harm at no cost to yourself or others, and without violating any moral constraint, you ought to do so" (2019: 5). He called this *Costless Rescue* (CR). CR is moderate in that the rescuer needs not to donate most or all her wealth to help the poor; rather, whenever it is costless for the rescuer to help the poor, the rescuer has a moral duty to rescue. CR is moderate in that it claims that people have a moral duty to help others, not at the expense of their most wealth, but only if the cost of rescue is little for them. Hence, Horton concludes that, by rejecting the premise that non-transaction is morally permissible, we can decline Zwolinski's view that

sweatshop exploitation is not wrong *and* the counterintuitive conclusion that we ought to leave sweatshop labourers in poverty rather than exploit them (ibid.). Rather, since both non-transaction with the poor and sweatshop exploitation are morally impermissible, the first point of the inconsistency argument ceases.

Nonetheless, whether or not people assess sweatshop exploitation and no help in a morally consistent way would not bother Zwolinski. His main point in the inconsistency argument is rather that sweatshop exploitation that benefits the poor (the evaluative claim) cannot be a serious wrong. The evaluative claim underpins the moral permissibility of sweatshop exploitation. In what follows, I distinguish between the evaluative claim and the first-party deontological claim. Once the distinction has been indicated, Zwolinski's view is implausible.

#### 7.2.4. The Evaluative Claim and the First-Party Deontological Claim

The distinction is most clear when we look at how Horton and Zwolinski are talking past each other. Zwolinski evaluates and justifies sweatshop exploitation by reference to the evaluative claim. Horton, by contrast, focuses on *the exploiter's action* to judge the moral wrongness of sweatshop exploitation, that is, *the first-party deontological claim*. Once the distinction between the evaluative claim and the first-party deontological claim has been separated, which is conflated by Zwolinski, it is clear that it is morally impermissible for *sweatshop owners* to exploit the poor in developing countries when and because they are able to provide a non-exploitative offer to the poor. The first-party deontological claim is true even if the evaluative claim — being left in poverty is morally worse than sweatshop exploitation in effect — is true. The fact that sweatshop exploitation benefits the poor, nevertheless, would not affect our moral assessment that sweatshop owners ought not to exploit their employees if they can. Horton, then, is correct that sweatshop owners have a

moral duty to offer a non-exploitative contract with the poor, were they able to do so at no or little cost.

Nonetheless, Horton and Zwolinski, I will argue, fail to distinguish between two major kinds of sweatshop exploiters: discretionary and structural exploiters. While discretionary exploiters are able to pay non-exploitative wages but refuse to do so, structural exploiters are unable to pay non-exploitative wages because of structural market competition. When the distinction has been specified, it becomes clear that different kinds of exploiters bear different moral duties, which have been neglected by Zwolinski. Hence, contra Horton (2019: 5-6) who holds that as long as the exploiter is capable of exploiting the poor, she is also able to help the poor costlessly. There are structural exploiters who are unable, but not unwilling, to pay non-exploitative wages to the labourers. Contra Powell and Zwolinski (2012) who hold that sweatshop exploiters are incapable of offering non-exploitative wages to the labourers, there are discretionary exploiters who are able, but unwilling, to pay non-exploitative wages. As such, it is important to distinguish different kinds of sweatshop exploiters because they bear different moral duties, and the distinction will affect whether sweatshop exploitation is morally permissible. Let us introduce the difference between discretionary and structural exploiters.

### **7.3. An Examination of the First-Party Deontological Claim**

This section indicates that whether or not sweatshop exploitation is morally permissible, all things considered, depends on what kind of sweatshop exploiters we refer to. Following Robert Mayer's distinction between discretionary, impure structural and pure structural exploiters (2007b), I discuss the moral duties of the three exploiters and the moral permissibility of sweatshop exploitation in each case.

### 7.3.1. The Difference Between Discretionary and Structural Exploiters

In discretionary exploitation, the exploiter is capable of offering non-exploitative wages but chooses to press her advantage against the exploitee to gain unfair benefits (Mayer, 2007b: 610). For the discretionary exploiter, it is possible to interact with others in a mutually beneficial and non-exploitative way without “placing that agent at a competitive disadvantage” (ibid.). Paying non-exploitative wages would not deprive the employer of just returns and instead makes the discretionary exploiter disadvantageous in market competition.<sup>115</sup> In *Greedy Mountain Rescuer*, Allen is a discretionary exploiter because he can ask for a fair price of the rescue from Bob at no cost but chooses to take unfair advantage of Bob’s desperation.

Structural exploitation, by contrast, refers to a situation where the exploiter’s decision to pay non-exploitative wages is very costly that she will not make any profits or/and has to close her firm (ibid.). Structural exploitation occurs mostly in the market competition where market agents cannot pay non-exploitative wages without raising the price of their commodities and reducing the profit rate of their business. In either case, structural exploiter faces a market disadvantage that the survival of her firm is at risk. Structural exploiters, thus, cannot pay non-exploitative wages without placing their firms at fatal risk. We might wonder whether sweatshop owners have a duty to pay non-exploitative wages at the expense of reducing their profits or closing their firms. This position echoes Powell and Zwolinski’s view that “The competitive forces between firms cause them to improve compensation as productivity increases” (2012: 458). When adopting Young’s definition of structural injustice to understanding structural exploitation, we may say structural exploitation encourages exploitation and make non-exploitation particularly costly (Young,

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<sup>115</sup> By remaining market competition, I mean the employs need not reduce the profit rate and raise the price of their commodity.

2006: 114). Hence, unlike discretionary exploiters, structural exploiters are confined by the established rules of structures and games that *their best strategy* is to exploit their employees. Otherwise, non-exploitation will pose a competitive disadvantage on them.

The moral difference between the two cases differs greatly, but, very often, the distinction has been conflated in Powell and Zwolinski's discussion. For instance, sometimes they acknowledge that "MNEs [multinational enterprises] have power in the form of wealth to rescue these [sweatshop workers]. However, rather than providing that rescue out of common kindness or a sense of moral obligation, they make it contingent on an onerous payment" (Powell & Zwolinski, 2012: 466). In other places, they treat the exploiter from an impersonal perspective: "Businesses employ labor up until the last marginal labourer no longer generates profits" (Powell & Zwolinski, 2012: 457). Powell and Zwolinski, then, conflate the morally significant distinction between discretionary and structural exploiters. The distinction will affect our moral assessment of whether or not sweatshop exploitation is morally permissible, all things considered. Let us consider the moral duty of the discretionary exploiter.

### **7.3.2. Discretionary Exploiters Ought to Pay Non-exploitative Wages**

The moral duty of the discretionary exploiter is to pay non-exploitative wages. Their duty could be either because, as Horton suggested, whenever we can prevent others from suffering significant harm at no cost to ourselves, we ought to do so, or because, as Kagan indicated, whenever one chooses to rescue, she must choose the best reasonable option (1991: 16). In Kagan's case, there is a burning house with a bird and a child stranded in it. Suppose the rescuer is only capable of saving one of them and chooses to save, surprisingly, the bird. For Kagan, the rescuer has done something wrong, because even if the rescuer is not morally required to undertake the risk, once she decided to rescue, other things being

equal, she ought to promote the greater good by saving the child (ibid.). Then, if sweatshop owners, as Zwolinski conceives it, decide to help the poor, which they are not morally required to do so, they have a moral duty to promote the greater good, that is, offering non-exploitative wages to the poor in developing countries.

On the other hand, Andrew Mason argues that citizens have a duty not to seek or gain an unfair advantage when compliance with the duty is costless for them (2012: ch.5). Such duty stems from our compliance with principles of justice, and it is not demanding because we ought to obey moral duties to the extent that they would not “generate excessive or unreasonable burdens of compliance” on us (Mason, 2012: 140). The duty, thus, applies to domestic (and offshore) discretionary exploiters who exploit their fellow citizens in sweatshop factories to gain unfair benefits. If so, domestic discretionary exploiters violate their duty not to seek or gain an unfair advantage for themselves when they can obey the duty at no or little cost. Thus, the above accounts provide different grounds to justify the discretionary exploiters’ duty not to exploit when and because paying non-exploitative wages is costless for them.

On the other hand, Cohen’s critique of the Nozickian proviso can be applied to the case of discretionary exploiters as well. Nozick claimed that an appropriation of an unowned thing is justified if and only if its withdrawal from the general use would not make anyone worse off than they would have been if the thing remained in the general use (Nozick, 1974: ch.7; Cohen 1995: 76). In other words, it is morally justified to appropriate a thing whenever the appropriation of that thing would not make others worse off than *status quo ex-ante*. However, for Cohen, the status quo ex-ante is not the only or the appropriate baseline to assess whether or not others will be worse off after the appropriation. Rather, Cohen argued that other counterfactual baselines, such as joint ownership where people can work together to create more social surplus, should be taken as an appropriate baseline, rather than the status quo ex-ante baseline (1995: 78-84).

Analogically, even though sweatshop exploitation is better than being left in poverty, there are other relevant baselines that should be considered to assess whether or not sweatshop transactions are fair or unfair.

If by sweatshop exploitation we mean discretionary exploiters, sweatshop exploitation is morally impermissible, all things considered. This is because the discretionary exploiter's behaviour is a form of *moral blackmail* in that it is their unwillingness, rather than incapacity, to pay non-exploitative wages that make their employees worse off than a fairness baseline.<sup>116</sup> The discretionary exploiter is the one who makes the poor's alternatives morally problematic. The discretionary exploiter then is acting wrongfully even if the evaluative claim is true. The fact that discretionary exploiters benefit the poor in developing countries would not make their action morally permissible. Hence, *it is morally impermissible for the discretionary exploiter to take unfair advantage of the poor's desperation, all things considered.*

### 7.3.3. Structural Exploitation: The Dilemma

Where the sweatshop exploiter refers to structural exploiters, a dilemma appears. Structural exploiters are unable to pay non-exploitative wages (irrespective of whether they are willing to pay better wages or not) because paying non-exploitative wages are very costly, and they will suffer great market disadvantages. In this section, by further distinguishing between impure and pure structural exploiters, I argue that while *impure structural exploiters* ought to withdraw from the market competition, *pure structural exploitation* requires collective action.

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<sup>116</sup> By moral blackmail, I mean "to perform a wrongful act that forces someone to do something by making her alternatives morally unacceptable" (Keller, 2018: 489).

### 7.3.3.1. The Impure Structural Exploiter

Structural exploiters, unlike discretionary exploiters who have room to decide whether to exploit or not at little cost, face market competition such that they have to take unfair advantage of “dependent third parties” so that they can remain competitive against rivals who also exploit (Mayer, 2007b: 612). Note that structural exploiters are facing a hard, but not a moral, choice between exploitation and bearing huge losses. Thus, exploitation is structural in the sense that agents within structures are confined and motivated by the socio-historical paths of the structure to act in an exploitative way (Young, 2006: 114). In some cases, structural exploiters in competitive settings may have room to operate, but only to the extent that they would not lose in the competition. However, even when facing market competition, structural sweatshop owners still have choices: between competing and quitting. When choosing competition, they have a choice between following the established rules of the market competition and breaking the rules (Mayer, 2007b: 612-613). Therefore, their choices introduce two further kinds of structural exploiters who bear different moral duties: impure and pure.

*Impure structural exploiters* refer to those who engage in structural exploitation but choose to break the established rules so that they can stay competitive or survive in the market (Mayer, 2007b: 613).<sup>117</sup> Impure structural exploiters, for instance, violate the labour law such that they do not pay the minimum wage, demand overtime work, and provide terrible working conditions that fail to meet basic health and safety standards. However, it has been argued that one of the moral duties of MNEs is to respect the laws of the foreign countries where they operate sweatshops (Arnold & Bowie, 2003: 227-228; Preiss, 2014: 66-67). By violating the laws, the MNEs violate the legal rights of labourers and, therefore,

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<sup>117</sup> For the sake of argument, I shall leave aside the question of whether market agents have an obligation to obey the established rules of the market. Suppose that these rules are basically fine and market agents are obligated to follow these rules.



disrespect them and local governments. Their illegal behaviours are problematic not only because the labour law is enforced to protect labourers from exploitation, but because MNEs are morally repugnant when they, on the one hand, rely on the laws enforced by foreign countries to protect their properties and enjoy tariff reduction, and on the other, they refuse to obey the labour laws so as to remain competitive or survive (Arnold & Bowie, 2003: 228). Impure structural exploiters, then, exploit by breaking the established laws.

The moral duty of impure structural exploiters, thus, differs from that of discretionary exploiters. Structural exploiters, in general, have three choices: quitting, competing by the established rules, and competing by breaking the established rules. Among the three choices, impure structural exploiters choose to break the established rules to remain competitive in the market. By doing so, they impose great negative externalities on the exploited and third parties. For instance, because they do not follow the labour law, the working condition in their factories is particularly awful than other factories who obey the law. Their employees have to bear the extra cost of keeping the impure structural exploiter competitive in the market, such that they have to work for long hours without payments. Besides, in some cases, they emit pollution without paying for it, which generates negative externalities on third parties. Hence, impure structural exploiters not only exploit their employees, they also generate great negative externalities on society because they are reluctant to take huge losses of the market competition.

Impure structural exploiters, then, have a moral duty to quit the market competition and compensate their employees and third parties for their extra burdens. Even if structural exploitation makes non-exploitation an extremely costly choice, impure structural exploiters ought to withdraw from the competition rather than break the established rules that make the situation even worse. Therefore, sweatshop exploitation in terms of impure structural exploiters is morally impermissible, even if they benefit the poor in developing countries, *all things considered*. This is because the fact that impure

structural exploiters face a costly choice does not morally justify their exploitation by breaking the rules. They have a moral duty to withdraw from the competition that leaves them unable to earn a decent income. The case of pure structural exploiters, however, is different from that of impure structural exploiters.

#### **7.3.3.2. The Pure Structural Exploiter**

*Pure structural exploiters* are those who engage in structural exploitation but do not break established rules of competitions to exploit (Mayer, 2007b: 613). The primary force of the established rules in structural exploitation is to exploit. As Mayer indicated, “The exploiters do take unfair advantage but they are nonetheless playing by the established rules of the competition. The rules permit substantively unfair exchanges and competitive pressure compels one to offer no more than this to the exploited party” (2007b: 615). Structural exploitation, thus, is composed of two main parties: the exploiter and the exploited. Most people within structural exploitation have relatively limited choices such that they are either exploiters, exploitees. Alternatively, they may suffer something in between, such as joblessness or precarious employment. In a highly competitive market, pure structural exploiters face the dilemma that on the one hand, the exploitative system “encourages their practices and constrains their ability to modify those practices” (Young, 2003: 40) and on the other, when they lose they will suffer huge losses and fall into being the exploited party.

On my interpretation, Marx’s description of capitalist exploitation represents a paradigmatic case of pure structural exploitation. For him, capitalist exploitation is not about discretionary exploiters who are capable of paying the non-exploitative wages but choose to exploit. Nor does capitalist exploitation, primarily, refer to impure structural exploiters who exploit by breaking established rules. Rather, capitalists are pure structural exploiters because, as structural exploitation, the capitalist mode of production confines

and motivates agents within it to act exploitatively, even if they may be unaware of their exploitative actions. As Marx indicated, “this circumstance [capitalists gain at the expense of workers] is a piece of good luck for the buyer [of human labour-power], but by no means an injustice towards the seller [of human labour-power]” (1990: 301). The quoted sentence suggests that capitalism is a form of structural exploitation because employers are in a position to gain more benefits from their relationship with employees due to the design of capitalism. For Marx, capitalist exploitation primarily refers to pure structural exploitation without involving the issue of rights and duties among individuals, though capitalist exploitation could be a form of discretionary exploitation as well.<sup>118</sup>

The exploiter that Powell and Zwolinski have in mind, I believe, is pure structural exploiters. The non-exploitative wages are very costly, and sweatshop owners seem to have no reasonable choice due to market competition. However, as I indicated, they mistakenly reduce three different kinds of exploiters to just one category — pure structural exploiters. Nonetheless, even when facing structural exploitation, pure structural exploiters have a moral duty to act jointly with others to correct structural exploitation. Even if structural exploitation is not caused specifically by pure structural exploiters, they should seek to act together with other structural participants to correct the exploitative rules whenever possible. The dilemma requires collective action.

However, if by definition structural exploitation is not caused by any specific groups or individuals in particular, we cannot find a particular person who is morally responsible for the evil of structural exploitation, not to mention to repair the whole system. Why do pure structural exploiters bear a moral duty to correct the rules of structural exploitation together with others? This question is misleading, though.<sup>119</sup> The fact that structural

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<sup>118</sup> There was a debate upon whether Marx has a theory of justice. I myself think that Marx consciously addressed the issue of capitalist exploitation from an amoral perspective, though it is possible to interpret the issue from the point of view of morality. For relevant discussions of the issue, see Marshall Cohen (2014), G.A. Cohen (1983b), Norman Geras (1985), Allen Wood (1972) and John Rawls (2007: 317-372).

<sup>119</sup> For relevant discussions, see Jonathan Glover (1975: 171-176) and Dereck Parfit (1984: Part 1).

exploitation is not caused by pure structural exploiters does not imply that they have no moral duty toward structural exploitation. Iris Marion Young (2006) proposed that, in addition to personal strategic choices, such as quitting the competition at the expense of huge losses or monopolising the market by exploiting more, pure structural exploiters (and all relevant participants) have a *political responsibility* to correct structural exploitation.

The moral responsibility of correcting structural exploitation, then, belongs to collective, not individual, obligations (Mayer, 2007b, 616). *The liability model*, which aims to assign a particular wrong to a particular person, then is not sufficient to deal with structural injustice in general (Young, 2006: 118). Instead, in responding to structural injustice, *the social connected model of responsibility*, proposed by Young, suggests that “individuals bear responsibility for structural injustice because they contribute by their actions to the processes that produce unjust conditions” (2006: 119). On the social connected model, one’s responsibility concerning structural injustice derives not from one’s wrongdoing but from “participation in the diverse institutional processes that produce structural injustice” (ibid.). The social connected model, then, proposes a specific model of responsibility for dealing with structural injustice, such as structural exploitation in which no specific person is liable for or is capable of correcting alone structural injustice.

The core idea of Young’s social connected model is that no one is an outsider of structures because structural injustice implicates everyone. Therefore, the fact that structural injustice is produced and reproduced by all participants implies that they all bear the responsibility, more or less, to correct structural injustice. If so, pure structural exploiters have a moral duty to repair structural exploitation, even though they are not particularly liable for, and are incapable of correcting by themselves, the evil of structural exploitation. For Young, agents in structural injustice bear *political responsibility* to cooperate and organise political associations which tackle the structural roots of injustices (2006: 123). Pure structural exploiters, then, bear political responsibility to cooperate with the

government and other participants to correct structural exploitation, even though they are not morally liable for structural exploitation and paying non-exploitative wages is not a reasonable choice for them.

For Young, those who participate in the process and the institution of structural injustice bear different kinds of responsibility to correct structural injustice according to their power, privilege, and interests (2006: 127-129). Pure structural exploiters, thus, bear relatively greater responsibility than others to correct structural exploitation, because they have *de facto* power to change the norms in factories and to cooperate with the local government and other factory owners to form reasonable rules. Also, since they are the main beneficiary in structural exploitation, they bear more responsibility than others to repair structural exploitation. *Hence, although it is arguable whether or not pure structural exploiters have a moral duty to pay non-exploitative wages at fatal costs, it is clear that they have a moral duty to act jointly with other agents in the structure to correct the rules of structural exploitation, all things considered.*

#### **7.3.4. Real-World Sweatshop Exploitation and Conclusion**

By distinguishing and scrutinising three kinds of sweatshop exploiters, I argue that *sweatshop exploitation in terms of discretionary and impure structural exploiters is morally impermissible, all things considered.* I thus object to Zwolinski's view on the moral permissibility of sweatshop exploitation. Moreover, even in structural exploitation, pure structural exploiters have a moral duty to correct the established rules of structural exploitation. Since Zwolinski slides between the evaluative claim and the first-party deontological claim, and since he fails to distinguish between different kinds of exploiters and their different moral duties, his claim that sweatshop exploitation is morally permissible, all things considered, is misleading.

On the other hand, the distinction between three kinds of exploiters helps to

understand the real-world sweatshop exploitation. In reality, I believe that sweatshop owners are very often discretionary exploiters where they are unwilling, rather than unable, to pay non-exploitative wages. The case of pure structural exploitation is relatively rare. Of course, this is an empirical question. However, in either case, they bear a moral duty to prevent exploitation, either by paying non-exploitative wages or by acting jointly with other agents to correct the exploitative structure, even though sweatshop exploitation is better than being left in poverty for people in developing countries. Having answered the second question, I then turn to the third question, that is, whether or not it is morally permissible for the state and other third parties to interfere with sweatshop exploitation. Contra Zwolinski, my answer is that the state and other agents' interference is morally permissible, all things considered.

#### **7.4. The Moral Permissibility of The Third-Party Interference of Sweatshop Exploitation**

For Powell and Zwolinski, it is *morally impermissible* for any third parties to interfere with sweatshop exploitation, regardless of whether the interference is done by consumer activism, bans, boycotts, or legal regulation (Zwolinski, 2007: 696-700; Powell & Zwolinski, 2012: 457-463). The third-party interference includes legal prohibition, consumer boycotts, international sanctions and so on. Now even if sweatshop exploitation, in my view, is, all things considered, morally impermissible, it does not follow that it is, all things considered, morally permissible for third parties to interfere with it. In this section, I object to Zwolinski's view that all interferences, conducted by the third parties, are morally impermissible, all things considered.

#### 7.4.1. Zwolinski on the Moral Impermissibility of The Third-Party Interference

For Zwolinski, because mutually beneficial and consensual exploitation is morally better than being left in poverty (the evaluative claim), “it is wrong to ‘take away’ the option of sweatshop labor from those who would otherwise choose to engage in it” (Zwolinski, 2007: 696), no matter this is done by a legal ban or consumer activism or some other means. Therefore, what defenders of sweatshops infer from the NWC is non-interference by third parties. Indeed, most worry that the prohibition of exploitation by the state will leave the poor in desperation that they have to find other ways worse than being exploited to survive, such as street hustling and prostitution (Macaskill, 2015: 162-163). Besides, on child labour, Cook indicates that “Simply eliminating it would make many poor children poorer” (2018: 294). If all the third party can do is to remove exploitation from the poor’s option-set without adding options better than being exploited, then most, including myself, will object to their interference. Thus, making the poor worse off than being exploited is the state of affairs that Zwolinski and most want to avoid. Call this *The Undesirable Outcome*: the state of affairs that leaves the poor worse off than being exploited.

On the other hand, Zwolinski implicitly presumes that the undesirable outcome is all the third parties can and will do. Hence, I shall add the element (6) to the NWC:

(6) *The undesirable outcome*—the state of affairs that leaves the poor worse off than being exploited—is that all the third parties can and will bring about.

#### 7.4.2. The Falsity of (6): Third Parties can do Better Than the Undesirable Outcome

(6) is false because third parties can do better than just prohibiting exploitation and leaving

the poor in poverty. As Zwolinski himself acknowledged, “whether governmental regulation will produce better outcomes than a free market will depend crucially on the kind of governmental regulation at issue” (2010: 342). The state can regulate sweatshop factories effectively rather than just prohibit them. Governmental inference includes prohibition and other policies. While Zwolinski is correct that we should avoid the undesirable outcome, he fails to notice that prohibition is just one of the governmental tools and could be accompanied by the enactment of other policies. For instance, the state can encourage sweatshop factories to promote working conditions by tax reduction. Or, other third parties can work effectively to eliminate exploitation without incurring the undesirable outcome. Most critics of sweatshops do not support closing the factories because this will leave labourers in poverty (Elliott & Freeman, 2003: ch.3; Barnes, 2013: 41). Also, in order to prevent children from being exploited and to avoid the undesirable outcome, the third parties send official representatives to protect children’s interests, which is now widely established (Flekkøy, 2002; Cook, 2018: 300). These are cases where third-party interference can avoid undesirable outcomes.

On the contrary, *non-interference* with mutually beneficial and consensual exploitation might bring about the undesirable outcome. Consider the case of organ selling. Organ markets may “reinforce incentives against addressing extreme poverty” because to eliminate poverty will reduce the supply of organs (Koplin, 2018: 43). Organ selling is a paradigmatic case of how exploitation reinforces poverty. Since people are willing to sell their organs because of their destitution, the buyers and relevant stakeholders in the organ market might resist policies to eliminate poverty so that the supply of organs would not be terminated. Consequently, non-interference with the organ market might see exploitation and poverty continue. Thus, it is misleading to conclude from the NWC that the third parties should not interfere with sweatshop exploitation under any circumstance.



### 7.4.3. The Third-Party Response to Structural Exploitation

Let us consider how third parties can respond to structural exploitation. Concerning discretionary exploitation, third parties have a variety of tools to make discretionary exploiters pay non-exploitative wages. However, structural exploitation is difficult to reduce because structural exploiters face pressure to keep profiting and competing with other owners. Most useful tools in discretionary exploitation will not work in structural exploitation. Paying non-exploitative wages will reduce earnings or competitiveness, which is vital for the survival of sweatshop factories and might harm the local economy. Exploitation, thus, is the best strategy to maintain competitiveness and profits. If so, in my view, the state and other third parties should increase the cost of exploitation. This can be done in many ways. For instance, the state may require that a labour union must be established in every factory, and their opinions must be considered by sweatshop owners. The compulsory labour union in sweatshop factories will help sweatshop labourers to resist exploitation and, therefore, generate more pressure on the owners. Another way to increase pressure to sweatshop owners is to publish the name of those who do not comply with working standards. Consumers might then refuse to buy their products. Consequently, once the cost of exploitation increases, sweatshop owners might think of reducing their profit rate or improving their competitiveness by technological innovation to maintain profits.

In sum, whether or not it is morally permissible for the third parties to interfere with sweatshop exploitation will depend on the actual effect of their inference. If the governmental regulations leave sweatshop labourers worse off than being exploited, it is *morally impermissible* for the state to interfere with sweatshop exploitation, all things considered. Conversely, it is *morally permissible* to interfere with sweatshop exploitation, all things considered, if the governmental regulations can and will make sweatshop labourers

better off. Therefore, the moral permissibility of third-party interference depends on whether or not they can act effectively and avoid the undesirable outcome. Hence, we may conclude from the NWC that *third parties should always interfere with sweatshop exploitation whenever their interference avoids the undesirable outcome.*

## 7.5. Objections and Replies

In this section I examine an objection to the moral impermissibility, and an objection to the legal permissibility, of sweatshop exploitation.

### 7.5.1. Positive Externalities Outweigh Negative Externalities

Others might argue that the externalities of sweatshop exploitation matter in deciding its moral permissibility. When sweatshop exploitation generates great positive externalities on society, even though it is exploitative, it is morally permissible. This view faces a major problem. Sweatshop exploitation may reinforce background injustice and vice versa. Since exploitation could be a form of historical injustice (Cohen, 1995; Roemer, 1988; Steiner, 2010), it is caused by a prior injustice and may, in turn, reinforce background injustice. In Steiner's view, a prior rights violation causes exploitation. Exploitation may, in turn, generate more rights violation and therefore, more exploitations. As a result, "These *chains of exploitations*, which can extend over generations and centuries, all have their origins in rights violation but, thereafter, those exploitations can become self-reproducing" (Steiner, 2017: 440, his italics). Steiner's view echoes one of Marx's main arguments.

As Marx indicates, "Capitalist production therefore reproduces in the course of its own process the separation between labour-owner and the conditions of labour. It thereby reproduces and perpetuates the conditions under which the worker is exploited" (1990:

723). Capitalism, for Marx, is a process of the proliferation of social inequality in all aspects of social life. The exclusion of a group of people from possessing productive assets forces the proletariat to sell their labour-power to the capitalist (Cohen, 1983c). The unjust social division makes capitalist exploitation possible and exploitation in turn strengthens and expands the structure of unjust social classes. As a result, the process of capital accumulation via class exploitation generates more exploitation and strengthens the subjection of the proletariat to the capitalist. As Marx puts it, “Along with the constant decrease in the number of capitalist magnates, who usurp and monopolize all the advantages of this process of transformation, the mass of misery, oppression, slavery, degradation and exploitation grows” (1990: 929). Call this *The Reinforcement Thesis*.

If it is true that sweatshop exploitation reinforces global and local inequalities by increasing the gap between the rich and the poor, even if it generates positive externalities on society, our worry about the circulation between sweatshop exploitation and global and local inequalities, outweighs its positive externalities. Sweatshop exploitation remains morally impermissible, all things considered. Defenders of sweatshops, then, have to explain when and how the positive externalities are so considerable that they may outweigh the concern of the Reinforcement thesis.

### **7.5.2. An Objection to the Moral Permissibility of the Third-Party Interference**

An objection to the moral permissibility of the third-party interference may contend that the increase of wages or the improvement of working conditions “usually come at a cost to someone” (Powell & Zwolinski, 2012: 467), whether they are owners, customers, or workers. To raise wages and to improve working conditions, very often, will result either in “threatening the short-term or long-term health of the company” or “firing other workers” (Preiss, 2014: 61). The objection rejects any improvement of wages and working

conditions enforced by the state because doing so will make some firms leave, and this would cause unemployment. The objection holds that the enforcement will make some discretionary exploiters pay fair wages and expire other discretionary exploiters. Consequently, the overall welfare of workers after the enforcement will decrease, compared to the overall welfare before the enforcement. If we care about worker's welfare, the third-party interference with sweatshops is morally impermissible, all things considered.

I have two replies. First, I acknowledge that the enforcement will generate costs that some firms will choose to leave and cause unemployment. However, when combining short-term and long-term benefits,<sup>120</sup> sweatshop labourers' welfare may increase and benefit from the enforcement. Matthew Coakley and Michael Kates (2013) have challenged Powell and Zwolinski (2012) on the actual effect of increasing wages via legislating the minimum wage law. On its short-term effect, enforcing the minimum wage law will bring about unemployment; nonetheless, the long-term effect of raising wages and setting the minimum wage law will generate "a large welfare gain" (Coakley & Kates, 2013: 556). The long-term effects can be seen in many ways. The rise of wages will benefit sweatshop workers immediately and the subsequent workers in the country; also, it might bring about industrial transformation and promote local economy (*ibid.*). Besides, empirical research has shown a positive correlation between the salary increase and productivity (Bliss & Stern, 1978). The impact of rising wages and the minimum wage law, therefore, could be positive in some cases.<sup>121</sup> Hence, the correlation between the rise of wages and unemployment remains an empirical question and varies case by case, which is not an eternal truth.

Second, if we care about unemployment caused by the enforcement of the minimum wage law, then the government should compensate for short-term losses and help the

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<sup>120</sup> By short-term benefits, I mean the benefits that will be received right after the transaction. By long-term benefits, I mean the benefits that will receive only after some time.

<sup>121</sup> Some economic research has shown that there is no positive correlation between wages rise and unemployment. For instance, see Doucouliagos & Stanley (2009), Lee & Suardi (2011) and Arnold & Bowie (2003: 237-239).

unemployed find jobs. More importantly, we have to think of whether it is worth keeping the whole country at a low wage just because some sweatshop owners threaten to leave when they are able, and legally required, to pay non-exploitative wages. The point at stake is that the government has flexible regulative tools to deal with the bad effects of the enforcement.

## **7.6. Conclusion**

I have argued against Zwolinski that sweatshop exploitation in terms of discretionary and impure structural exploiters is morally impermissible, *all things considered*, even though sweatshop exploitation benefits the poor in developing countries. Also, I have argued that it is, *all things considered*, morally permissible for third parties to interfere with sweatshop exploitation *if* they can avoid the undesirable outcome. Hence, even if capitalism has created an unprecedented level of wealth in human history, capitalism as structural exploitation ought to be terminated and rectified. This is because it exploits people and reinforces social and global injustices.

## 8. Conclusion: A World Without Exploitation

I close the thesis by summarising the core arguments in each chapter, how the thesis emerges into general theses, and by indicating its limits and further applications.

### 8.1. A Summary of The Core Arguments

In Part 1, I proposed and defended an account of exploitation against alternatives. I argued that my account is more comprehensive than alternatives because I resolved the contrast between Wertheimer's fairness account and Sample's disrespectful account by merging them into two forms of wrongful gain. Further, my formulation of the advantage-taking behaviour can identify a wide range of the asymmetrical relationship between parties. Thus, my account of exploitation can accommodate previous accounts and identify exploitative cases that would not be regarded as exploitation by previous accounts. In Part 2, I reviewed the disagreement between luck and social egalitarianism, which has helped to deepen our understanding of egalitarian justice and, since non-exploitation is an inherently egalitarian ideal, it gives us a better understanding of why exploitation is unjust. More importantly, in Chapter 6, I contended that luck egalitarians fail to notice and deal with exploitation that emerges from a just world. Hence, luck egalitarianism is incomplete in that respect, and it needs an independent principle of non-exploitation. Specifically, it needed the principle that I developed at the end of Chapter 6: exploitation as a free-standing injustice. Against those that argue that exploitation is a derivative injustice that must stem from a prior injustice, I have argued that exploitation is a free-standing injustice and that exploitation is unjust on its own, regardless of its history. Consequently, the exploitation objection poses a challenge to luck egalitarianism. Whereas many common relational egalitarian critiques have been found unpersuasive, I claim to have shown that a new relational critique (my

exploitation argument) succeeds. Luck egalitarians cannot fully capture an important kind of injustice: the injustice of exploitation.

Having proposed and defended an account of exploitation and having explored two ways to perceive the injustice of exploitation, in Part 3, I examined whether sweatshop exploitation, which benefits the poor in developing countries and is mutually consensual, is morally permissible, all things considered. I also considered whether it is morally permissible for third parties to interfere with exploitation. Contra Zwolinski, who contended sweatshop exploitation is all-things-considered morally permissible since it is better than no-transaction for the poor in developing countries, I argued that since the sweatshop owners should not exploit their employees, even if sweatshop exploitation benefits the poor in developing countries, it is all-things-considered morally impermissible. Further, it is always morally permissible for third parties to interfere with sweatshop exploitation, when and because the interference can make the exploited better off.

The thesis, then, has three major contributions. First, I outline and defend my own account of exploitation by criticising leading accounts of exploitation (those of Wertheimer, Sample, Steiner, Roemer, etc.). Second, I offer an analysis of the relationship of exploitation to equality and illustrate how luck egalitarians are vulnerable to the exploitation objection. Third, I rebut the non-worseness claim, which states that mutually consensual and beneficial exploitation is morally permissible, and that third parties should not interfere with sweatshop exploitation.

## **8.2. Exploitation, Marxism, and Egalitarianism**

The thesis uses the notion of exploitation to probe the nature of egalitarian justice. The first implication is that both luck and relational egalitarians need to engage more with the concept of exploitation. As we have seen, it is surprising that the concept of exploitation

has largely been ignored in the literature of relational egalitarianism because relational egalitarians tend to focus on social oppression and domination. In contrast, it is equally surprising that leading luck egalitarians, such as Cohen, Roemer, Arneson, and Steiner, focus much attention on exploitation because luck egalitarians are considered by relational egalitarians to focus exclusively on the distributive notion of equality. The image is clearly misleading.

Some might reply that, if exploitation is not a serious problem, and if relational and luck egalitarians fail to pay enough attention to it, why should we care? Well, a *prima facie* response is that, if they aim to offer a complete theory of egalitarian justice, both relational and luck egalitarians should think about how to deal with exploitation in principle. The issue of exploitation then raises some theoretical interests. However, as Marx and Marxists have constantly argued, exploitation is an inner drive that facilitates social and global, inequalities and, in itself, is a form of objectionable inequality. More importantly, the endless pursuit of profits through exploitation tends to cause the cyclical crisis of capitalism, oscillating between inflation and recession, boom and slump (Harvey, 2010; Clark, 1994; Carchedi & Roberts, 2018; Weeks, 2010; Yagi, Yokokawa, Shinjiro, & Dymski, 2013). Marx treats capitalism as a social system and exploitation is the central issue surrounding capitalism. These issues are connected and can hardly be solved alone. If one wants to argue that exploitation is not a serious problem, one needs to spend equal efforts to respond to the extensive, theoretical and empirical literature on exploitation. If exploitation, as Marx and Marxists point out, is such a serious issue at the heart of capitalism, it is clear that egalitarians should put more emphasises on it.

The second implication, summarised from the claim that luck egalitarianism is vulnerable to the *ahistorical* concept of exploitation, seems to demonstrate that luck egalitarianism is also vulnerable to similar notions, such as interpersonal, oppression, discrimination, and domination. If option-luck exploitation could arise under the luck



egalitarian agenda, these ahistorical notions are likely to occur in a just world where no one suffers unchosen disadvantages. If so, luck egalitarianism needs to think about how to prevent unequal treatments between individuals in principle. How could they respond to choices that will affect others? One's voluntary choice could be another's bad brute luck.<sup>122</sup> A reflection on how luck egalitarians can plausibly deal with exploitation, therefore, indicates the incompleteness, rather than the implausibility, of luck egalitarianism and suggests that they also need to consider how to address oppression or domination that arises justly from just background conditions.

The third implication is about the conversation between liberal egalitarianism and Marxism. Liberal egalitarianism and Marxism are like two parallel lines without substantial dialogue. Cohen, and analytical Marxism, are a few exceptions. The concept and the injustice of exploitation, then, are the places where both sides can start a meaningful dialogue. There are other similar issues worth discussing, such as market socialism, property-owning democracy, workplace democracy, and, more importantly, Marx's position on the methodology of political philosophy. A healthy and real dialogue can help to clarify our view and why we disagree with each other. In any sense, this is a good thing and what Cohen had kept doing.

### **8.3. The Limits of The Thesis**

The thesis has, at least, two limits. The first limitation concerns my formulation of unfair exploitation, which is based on a baseline of fairness that is objective, rather subjective.. For instance, just price theory claims that the price of a commodity is just if it reflects the cost of a commodity. A just price, thus, is objective in the sense that the cost of a

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<sup>122</sup> Some luck egalitarians have addressed these issues. For example, Dworkin discusses his principle of independence and principle of dependent democracy (2002: ch.3 & 4). See also Cohen (2011).

commodity would not be affected by individual preferences. Some are very doubtful about whether such an objective baseline of fairness is possible. In cases of really egregious exploitation, we might not need to derive a specific account of the objective baseline (since any plausible view would condemn egregious exploitation is unjust). However, once we encounter less clear-cut cases, an objective baseline of fair distribution between parties is required to assess whether A gains fairly or unfairly. In practices, such baselines are required. The first limit then is that I did not defend any such baselines.

The limit is similar, if not identical, to the debate between the internal and the integrationist principles in international trade. James (2012a: 100-127, 2014: 177-200) and Risse (2012), hold that principles for international trades are independent of a wide range of other moral issues; the integrationist principles, proposed mainly by Caney (2012a: 283-285; cf. Caney, 2009, 2011, 2012b), maintains that distributions in different domains should be intertwined because we have no reason to treat them as special or *sui generis*.<sup>123</sup> Based on Caney's integrationist approach, Walton proposes two further kinds of integrationism for trade, namely, *substantive and procedural integrationism* (2020). While procedural integrationism for trade states that distributions in trade can be tainted by moral claims outside trade, such as colonialism and security, substantive integrationism for trade claims that justice with respect to the losses and gains of trade should be sensitive to participants' overall levels of advantage (Walton, 2020: 53-61). Put differently, the internal approach to trade, it seems, rejects that moral concerns in domains other than trade can affect justice in trade; the integrationist approach, in contrast, insists that moral concerns in different domains should jointly determine how to distribute the losses and gains in trade.

In reply, first, I reject the internal approach in the sense that it denies that other moral concerns should jointly determine how to distribute losses and gains in trade. On the other

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<sup>123</sup> See also Dworkin's integrated account of health care justice (2002: ch.8).

hand, regarding the just price theory, I think we need to distinguish two claims: the first is that a price is fair, perhaps just, when and because it reflects its cost of production; the second is that a commodity has the cost, but its price could be effected either by supply and demand of the whole market or by individual preferences;<sup>124</sup> the price of a commodity that reflects either supply and demand of the whole market or by individual preferences is not necessarily unfair. *I acknowledge both claims.* However, for those who reject the just price theory, the first claim is false, either because they do not think a commodity has the cost, or because they reject that a price is fair or just when and because it reflects its cost of production or both. Moreover, they might insist that a just price can only be generated under just background conditions, in which no one suffers unchosen disadvantages.

The issue is complex because the commodities that we are talking about will determine whether they have the cost of production. For instance, Van Gogh's paintings have no objective price, and people are willing to pay as much money as they can to bid his works. In this case, the just price theory, or an objective baseline of fairness, do not apply, and the price is determined happily by individual preferences. Nonetheless, if we are talking about commodities, produced by mass production, such as pens, books, and computers, it is clear that their selling price is very often correlated to their cost of production, and their price is affected by supply and demand of the whole market, rather than individual preferences. Therefore, it is important that we have a clear object. In the case of Van Gogh's painting, exploitation occurs when one of bidding parties suffers injustice that makes the bidder of Van Gogh's painting gain unfairly in the sense that the seller could have sold the painting at a higher price had the injustice not occurred.<sup>125</sup>

On the other hand, if one insists that the price of a commodity is fair or just if and only if it is generated under just background conditions (the ideal price), she has to

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<sup>124</sup> Note that the price of a commodity could be affected either by the micro-, macro-, or by both economies, which each represent different cases.

<sup>125</sup> This is basically Hillel Steiner's account of exploitation. See Steiner (1984, 1987).

acknowledge that all the exchanges in our world are, more or less, unjust according to the ideal price. If so, exploitation is everywhere. Sweatshop labour and transactions in local shops are all exploitative because they are generated under unjust background conditions. The view, though it is theoretically defensible, has no practical implication. Instead, even if the ideal price is fairer and juster than an objective baseline of fairness — such as the just price theory, an objective baseline maintains that it can specify when and why a transaction in our unjust world is exploitative, rather than treat all transactions as exploitation. I hope I have explained why we need an objective baseline of fair exchange, even if such baselines are less fair and just than the ideal price.<sup>126</sup>

Another limit concerns exploitation as free-standing injustice. I have explained that exploitation is unjust because the exploitee is excluded by the exploiter from the process that determines their relevant interests and being treated as inferior. However, this explanation is somehow unspecified and underdeveloped. What is behind the egalitarian explanation seems to be the notion of social exclusion and, therefore, a conception of democracy. If so, one might wonder whether exploitation is unjust because it is undemocratic or inequalitarian. We need more explanations to clarify the relationship between exploitation, social exclusion, and democracy. We might wonder how the three notions connect to each other in a meaningful way without subjecting one concept to another. Until their relationship has been fully explained, we will not be able to know precisely why exploitation, and similar notions, is unjust from the perspective of egalitarian justice. The above two limits could be further developed in the future.

#### **8.4. Further Applications**

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<sup>126</sup> The substantive principles of just exchange are underdeveloped in the current literature. See Mildenberger (2020) and Miller (2017).

The issue of exploitation has received much attention in applied ethics. Although I did not discuss exploitation in trade particularly, the notion of exploitation is one of the central issues in theories of trade justice (Risse, 2007; Kurjanska & Risse, 2008; Risse & Wollner, 2019; Miller, 2010: 63-69; James, 2005, 2012b; Walton, 2013: 700-703, 2018, 2020; de Bres, 2019; Brandi, 2014), and of global justice (De-Shalit, 1998; Pearson, 2011; Risse, 2012, 272; McKeown, 2017a, 2017b). For instance, by demanding direct trade relationships and pre-financing, fair trade can prevent exploitation by middlemen (Walton, 2010: 434). Besides, exploitation in clinical research is another important issue (Wertheimer, 2010; Hawkins & Emanuel (Ed(s).), 2008; Wenner, 2015). Also, many have focused on exploitation in guest workers (Mayer, 2005; Attas, 2000), prostitution (Shelby, 2002), organ selling (Greasley, 2014; Koplin, 2018; Islam & Gasper, 2017), price gouging (Sample, 2017; Zwolinski, 2008), and commercial surrogacy (Panitch, 2013; Wilkinson, 2013; Mitra, 2017). More broadly, exploitation is intertwined with gender (Panitch, 2017; Lange, 2017), race (Mills, 2017), and class (Miller, 2017).

My account of exploitation has an advantage in assessing whether or not these cases involve exploitation. That is, it offers two kinds of exploitation — unfair exploitation and disrespectful exploitation — to examine whether exploitation takes place in these cases. We can ask, for instance, whether or not child labour is exploitative because of the wage is unfair relative to a principle of a fair wage, or, more importantly, because to commodify child's labour for beneficiary use is disrespectful and should be prohibited. Or, in the case of clinical research, we can ask whether or not exploitation occurs because the contract of a clinical trial is unfair relative to a fairness baseline, or because clinical research is a disrespectful way of beneficiary use. My account of exploitation, thus, can assess whether exploitation in these cases is about the terms of a transaction, or that we should not profit in a certain way. As such, we can prescribe to the right medicine to the right kind of exploitation in these cases.

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